

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	CRIMINAL ACTION FILE
)	NO. 1:06-CR-147-WSD-2
v.)	
)	ATLANTA, GEORGIA
EHSANUL ISLAM SADEQUEE (2))	
)	
Defendants.)	
_____)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WILLIAM S. DUFFEY, JR.,
UNITED STATES DISTRICT JUDGE, AND A JURY

VOLUME 5
Monday, August 10, 2009

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*Proceedings recorded by mechanical stenography
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Monday Morning Session

August 10, 2009

9:01 a.m.

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P R O C E E D I N G S

-- -- --

(In open court without a jury present:)

THE COURT: All right. Good morning,
everybody. Is there anything we need to discuss before we
bring the jurors back in?

MR. McBURNEY: No, sir.

THE COURT: I assume Mr. Kohlmann is here; is that
correct?

MR. McBURNEY: He's right outside.

THE COURT: Mr. Sadequee, anything from you?

MR. SADEQUEE: No.

THE COURT: Let's bring the jurors in, please.

(In open court with a jury present:)

THE COURT: All right. Good morning, ladies and
gentlemen. I hope you had a good weekend.

We are still in the government's case. You recall
Mr. Kohlmann had completed his direct examination on Friday
and is now subject to cross-examination by Mr. Sadequee.

And I would remind you, Mr. Kohlmann, that you are
still under oath.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Mr. Sadequee?

3 -- -- --

4 EVAN F. KOHLMANN

5 being previously duly sworn by the Courtroom Deputy,

6 testifies and says further as follows:

7 -- -- --

8 CROSS-EXAMINATION

9 BY MR. SADEQUEE:

10 Q. Good morning.

11 A. Good morning.

12 Q. I would like to ask -- to begin by asking you this
13 question. Have you ever testified for the defense?

14 A. No, I have not. I was requested on only one occasion,
15 and the only occasion I didn't was because of the fact that
16 it was a war crimes case where the defendant was a nonMuslim
17 defendant accused of committing war crimes against Muslims.
18 And I didn't want to be involved in justifying genocide
19 against Muslims.

20 Q. How much do you get paid to come testify?

21 A. It depends. I get paid by the hour.

22 Q. In this case?

23 A. I get paid by the hour. My standard hourly rate is \$350
24 an hour.

25 Q. You consider yourself a social scientist; correct?

1 A. That is correct, yes.

2 Q. And you have also studied comparative religion?

3 A. That is correct. I have a degree or certificate in
4 Islam and Muslim-Christian Understanding.

5 Q. You have spoken to people who consider themselves
6 jihadists?

7 A. I believe so, yes.

8 Q. And you have spoken to those who don't consider --
9 Muslims who do not consider themselves jihadists, but Islamic
10 activists?

11 A. Oh, many, many, yes.

12 Q. Do those -- in your conversations with Muslims, activist
13 Muslims, do they consider jihad a part of Islam?

14 A. They consider jihad a part of Islam if you are talking
15 about internal spiritual jihad.

16 But when you are talking about physical violent jihad,
17 only in very limited scenarios. Not in any present situation
18 that I can think of, no, other than perhaps the
19 Israeli-Palestinian conflict.

20 But beyond that, I would say that would be the only
21 conflict where I have met mainstream Islamic activists who
22 have considered jihad to be a legitimate cause.

23 Q. What about the Chechen --

24 A. Chechnya is a difficult case. There are some who
25 believe that it is a legitimate jihad. However, among

1 moderate Islamic activists, the predominant opinion is that
2 the Russians are committing aggression and that should stop,
3 but that the proper response to that is not more violence.
4 The proper response to that is to achieve economic prosperity
5 and peace for Chechnya and to achieve a withdrawal of Russian
6 military forces.

7 In other words, moderate Islamic activists generally
8 don't advocate violence as a methodology.

9 Q. But do they believe, theoretically speaking, that there
10 is a more jihad concept in Islam? Not whether or not this is
11 a correct time in the Islamic point of view, that's not the
12 question. The question is do they believe in Islam there is
13 such a thing as warfare called jihad?

14 A. So you are setting aside the spiritual sense of jihad?

15 Q. Yes.

16 A. You are talking about the physical sense?

17 Yes, I mean, certainly in the history of Islam, if you
18 look, yes. But in terms of whether it's a pillar of Islam,
19 it is only a pillar of Islam Shiites, not Sunnis.

20 Q. The institution of jihad has a -- throughout Islamic
21 history has been, until the last few centuries, has been an
22 active history of jihad; correct?

23 A. Depending on what you are referring to as jihad and
24 depending on who you are referring to as having an active --
25 not all sections of the Muslim world have long experiences or

1 long histories of jihad. It's only certain areas where jihad
2 comes up and in certain schools of thought.

3 Jihad is not a central concept to all schools of thought
4 in Islam.

5 Q. I mean, for example, throughout the various Islamic
6 states or empires or dynasties, whatever you want to call it,
7 the vast -- or many, the Ottomans, you know --

8 A. If you are talking about a thousand years ago,
9 yes. Yes, a thousand years ago, jihad was a concept that was
10 used, yes.

11 Q. The Ottomans, are they a thousand years ago?

12 A. No, that was a century ago. But even the Ottomans
13 didn't -- the Ottomans were Muslim and they ran an Islamic
14 empire, but the way that they ran their empire, they didn't
15 even call their soldiers Mujahideen. They called them
16 Janissaries.

17 So the idea that this was some kind of Islamic jihad,
18 I don't know if you could really argue that, not at least in
19 the terms of the contemporary Ottoman empire of the 19th and
20 20th centuries.

21 Q. Jihad -- does jihad equal terrorism?

22 A. Jihad equals jihad. I think jihad is -- jihad is holy
23 struggle. And in the violent sense, it's holy physical
24 struggle, violent struggle.

25 Whether or not it is terrorism, that's a legal

1 definition. In this country, generally speaking, acts of
2 jihad are defined as terrorism if they are committed against
3 innocent civilians, noncombatants, or individuals who are not
4 in a conflict zone or with organizations which are banned
5 organizations.

6 Q. Is it true that Muslims who do believe in jihad consider
7 jihad similar to what in Christianity is considered a just
8 war theory?

9 A. I really couldn't answer that question. I don't believe
10 in jihad myself, and the jihadis -- I can explain it from an
11 Islamic perspective, but I don't think I can compare jihad --

12 Q. The Muslims you have spoken with --

13 A. Yeah.

14 Q. -- what's their -- is their philosophy of jihad akin to
15 a just war theory?

16 A. Define what you mean by a just war theory.

17 Q. Do they believe they are killing innocent people and
18 they seek to cause chaos and mayhem, or is it their
19 philosophy and their view that they are fighting aggression
20 and they are fending off aggression?

21 A. That is one theme. However, the idea that all
22 Mujahideen or all jihadis or all jihadists are the same or
23 have the same motivation or the same mind set is obviously
24 not the case.

25 Some jihadis are more religious-focused, the idea that

1 they are looking for particular verses from the Quran and
2 saying in this verse it says that, you know, it is our duty
3 to fight against the kuffar, the infidels and the
4 apostates.

5 Other people say, well, this is an illegitimate
6 political occupation of Muslim lands, so that's my just
7 cause.

8 But it depends, it can be religious, it can be
9 political, it can be a variety of different things. But
10 ultimately it all boils down to acts of violence, yes.

11 Q. In Islam there is warfare or jihad. Is this the laws,
12 rules, conditions, regulations behind it?

13 A. Depending on what school you are in and depending on
14 which scholars you follow and depending on how dedicated you
15 are.

16 There are some that are more rigorous about following
17 rules of jihad and about the fatwahs of jihad. But it should
18 be emphasized that there is no one rule book for jihad, there
19 is no one set of guidelines for jihad. It entirely depends
20 on which scholars you follow and which school of Islam you
21 are part of.

22 There are some moderate scholars of Islam which again
23 say, Well, if it's a situation where the Muslim community is
24 embattled and they are about to be threatened with genocide,
25 then we have a duty to respond.

1 There are others that say, It's our duty to aggressively
2 go out and establish the Kalafate, establish the state of
3 Muslim, regardless of whether or not Muslims are actually
4 threatened or not. It's our duty to establish the state by
5 any means necessary.

6 So to generalize, I don't think you can
7 generalize. I think it depends on the individual person.

8 Q. But is there any school of thought that says that there
9 is -- it's a free-for-all, anyone can do anything, or --

10 A. It really depends on your perspective. There are some
11 people out there -- and I'm not claiming that they are
12 mainstream, but there are some people out there that are
13 known as -- that are known as the khawaarij or the deviants
14 or the dissenters who more or less argue that the ends
15 justify the means.

16 Q. Who are the who khawaarij?

17 A. The khawaarij? The khawaarij are people who believe in
18 jihad but believe simply that everything that came after
19 God's law and laid down the Quran has been manufactured by
20 humans, has been corrupted and everything else, and thus the
21 only rules that they apply are the ones that they interpret
22 from the Quran through individual interpretation or
23 ijtihad.

24 That's i-j-t-i-h-a-d.

25 Q. The khawaarij that you mentioned, they are people who

1 consider anyone who commits a sin, such as in Islam let's say
2 drinking alcohol, could not be a Muslim; correct?

3 A. Not just that, they consider in some cases khawaarij
4 simply declare that if you are Muslim or you are supposed to
5 be a Muslim and you are living in a nonMuslim society and you
6 permit yourself to live in nonMuslim society, then by
7 definition you are the enemy, you can be excommunicated from
8 Islam. You can declare takfir on someone and you
9 excommunicate them.

10 And once they are excommunicated from Islam, you can do
11 anything you want to them. You can steal their money, you
12 can kill them, you can kidnap them. They are no longer
13 within the Dar of Islam, the House of Islam.

14 They are also -- khawaarij are also known as takfiris.

15 Q. Now, the khawaarij, other than the khawaarij, the
16 previous question was the vast majority of -- for example,
17 the Tibyan Publications, the publications you read, are these
18 khawaarij material or are these material which sets out laws
19 and regulations?

20 A. That's entirely a subjective question. There are people
21 that view Tibyan Publications as khawaarij because of the
22 fact it advocates individuals going out without any command
23 and committing acts of jihad on their own.

24 There are others that view Tibyan Publications as the
25 centerpiece of the modern, the modern jihadi mindset. But

1 those are people that generally are supportive of Al-Qaeda
2 and Osama Bin Laden.

3 Likewise, there are lots of Muslims out there that view
4 Osama Bin Laden and people like Abu Musab al-Zarqawi as
5 khawaarij, as deviants, as fanatics, people that have taken
6 the rules of jihad and perverted them for their own cause.

7 And to be fair, even some of the scholars in Tibyan have
8 made comments to that effect after they have been imprisoned;
9 namely, people like Abu Muhammad al-Maqdisi and
10 Shaykh Dr. Iman Afada

11 Q. Now, since you mentioned the khawaarij, is it not true
12 that one of the main tenets of the khawaarij scholars of
13 Islamic law mentioned is that they consider that anyone who
14 commits what's called kaba'ir or major sins such as
15 committing adultery and drinking alcohol and so on and so
16 forth, anyone who does such things is according to khawaarij
17 not a Muslim?

18 A. Generally speaking that is correct, yes.

19 Q. Does Tibyan Publications advocate that belief?

20 A. I couldn't tell you offhand, I'm not sure.

21 But again your definition of what khawaarij is is
22 subjective. There are other people who view the idea that
23 anyone that's issuing a fatwah saying that other Muslims who
24 you don't know and you can't name personally should be
25 murdered or should be killed, that right there is an act of

1 khawaarij, that right there is excommunicating someone and
2 justifying their murder without justification.

3 So I mean, I understand what you are saying, but the
4 modern definition of khawaarij is much more subjective than a
5 simple rule about whether or not they have committed a great
6 sin or not.

7 If you are going out and killing somebody without having
8 them identified by name and without being able to identify
9 the specific sin that that person committed, then you are in
10 fact -- you could be in fact part of a khawaarij, yes.

11 Q. And in your readings of Tibyan Publications and
12 analyzing it, have you come across any material which Tibyan
13 Publications has translated warning against the khawaarij or
14 clarifying or criticizing the khawaarij?

15 A. I believe there are some documents, but again the
16 definition of Al-Qaeda, for instance, Al-Qaeda, the
17 organization, terrorist organization, they attack other
18 people as being khawaarij.

19 For instance, there is a terrorist group in Algeria
20 known as the Armed Islamic Group which went out and started
21 killing civilians, and as a result Osama Bin Laden and other
22 jihadi leaders declared them to be khawaarij, people who were
23 killing others for unspecified sins.

24 Yet at the same time, there are plenty within the modern
25 Muslim community who refer to Bin Laden and his crew as

1 themselves khawaarij for killing Muslims without
2 justification and explaining that they are sinning by living
3 in a nonIslamic country or by living under the Al-Salul, the
4 government of Saudi Arabia, and by doing that, that is a
5 justification in and of itself.

6 So again it really depends on your perspective. There
7 is no one hard, fast definition of who is
8 khawaarij. Khawaarij simply refers to deviants, fanatics,
9 people who are twisting the definitions of Islam to fit
10 whatever political agenda that they have.

11 Q. Is it not true that Tibyan Publications does not declare
12 the masses, the populaces of Muslim countries -- the
13 population of Muslim countries, not talking about the
14 governments, but Tibyan Publications does not consider the
15 masses to be -- or does not do takfir, which is declaring the
16 masses to be nonMuslim?

17 A. Tibyan didn't do what the -- Tibyan did exactly kind
18 of -- it fit with the Al-Qaeda mindset; okay?

19 Tibyan, for instance, was against the kind of khawaarij
20 that the GIA was doing in Algeria, just the same way that
21 Osama Bin Laden was against that khawaarij. They never said
22 all Muslims who are not with us are against us and thus they
23 should be murdered.

24 However, Tibyan also justified the killing of Muslims if
25 they were bystanders in the way of a particular target, and

1 they didn't specify that Muslims should not be killed.

2 So I think again it depends on the way you view
3 khawaarij. I think there are a lot of moderate Muslims that
4 would view a lot of the fatwahs endorsing suicide missions,
5 endorsing blowing up bombs in front of crowds, knocking down
6 buildings, that kind of stuff, generally speaking in modern
7 Islam is point of fact khawaarij. Any moderate Muslim would
8 identify that as being fanatic or deviant behavior.

9 Q. Are you familiar with -- you mentioned a couple minutes
10 ago Abu Muhammad al-Maqdisi. Who is Abu Muhammad al-Maqdisi?

11 A. Abu Muhammad al-Maqdisi is a Jordanian cleric who was
12 imprisoned in the early 1990s in Jordan for his role in
13 allegedly inciting acts of violence by Salafi-Jihadis inside
14 of Jordan, the bombings of movie theaters, attacks on
15 government officials.

16 Al-Maqdisi, while he was in prison, met another young
17 Jordanian, Abu Musab al-Zarqawi, and he became Zarqawi's
18 spiritual mentor.

19 Maqdisi at present is considered to be one of the
20 shining lights in the world of Salafi Jihad. He is a cleric,
21 but he issues fatwahs, he speaks with people, he endorses the
22 general mission of jihad and of the Mujahideen.

23 Q. Are you familiar with one of his books called *Waqfat*
24 *Ma'thamarat Al-Jihad*?

25 A. I believe I am. *The Guidelines for Jihad*; correct?

1 Q. It was his -- translated as Reflections on the Fruits of
2 Jihad or the Results of Jihad.

3 A. I believe you are referring to his assessment of
4 Abu Musab al-Zarqawi when he was in prison.

5 Q. It was a series of articles which came out as a book,
6 yes.

7 A. Right, when he was in prison; correct?

8 Q. Yes.

9 A. Yes. I am familiar with that, yes.

10 Q. What is the topic of that book or what's addressed
11 within that book?

12 A. Abu Mohammed al-Maqdisi essentially argued that Zarqawi
13 had gone beyond what had been justified by -- in other words,
14 Abu Mohammed al-Maqdisi had described Zarqawi as almost
15 becoming khawaarij, a takfiri.

16 He described that Zarqawi had gone beyond the rules of
17 jihad and was doing damage to jihad by some of the stuff that
18 he was doing inside of Iraq.

19 But again that was written -- that was published while
20 he was being held in prison --

21 Q. But --

22 A. -- in Jordan.

23 Q. But he came out I believe in 2005 and did an Al Jazeera
24 interview; correct?

25 A. That's correct.

1 Q. He mentioned this book as well?

2 A. That's correct, he did.

3 Q. And he did have some criticisms on the Iraqi jihad;
4 correct?

5 A. Very specifically with regards to Iraq, but not with
6 regards to any other jihad. Not with regards to Osama Bin
7 Laden, not with regards to Ayman al-Zawahiri, not with
8 regards to strikes against the United States. Only with
9 regards to what was going on specifically in Iraq.

10 Q. Now, this book, *Reflections on Jihad, Waqfat* or
11 *Reflections on the Fruits of Jihad*, did he criticize the
12 tactics which were being used, such as some of the things you
13 mentioned about civilian casualties, disregard for --

14 A. Not necessarily civilian casualties, but Muslim
15 casualties. His concern was that Zarqawi's tactics in Iraq,
16 by bombing mosques, by bombing community centers, by bombing
17 places that were exclusively Muslim, that Zarqawi was
18 threatening to drive a stake in the middle of the
19 Salafi-Jihadi community and destroy the support for the jihad
20 among ordinary Muslims.

21 Q. Did Tibyan Publications translate this?

22 A. I believe they did, yes.

23 Q. Is this a book on tactics, or is it a book on Islamic
24 laws of jihad in connection to --

25 A. Well, again, that's a subjective question. I think the

1 answer is A and B. It's a little of Column A and a little of
2 Column B. It depends on your perspective.

3 There are people that are looking to these documents for
4 tactical advice. There are some people who are just
5 generally interested in the spiritual context. But it
6 depends exactly who you are talking about.

7 Q. I think I will ask again, is the books of Abu Muhammad
8 al-Maqdisi, these are books on religious law, theological
9 philosophy, or are these military training-type material?

10 A. It really depends on what you are talking about. Right
11 now Abu Muhammad al-Maqdisi at this very moment is engaged in
12 something that is known as the Friends of Osama Conference
13 where he's taking open questions from Salafi-Jihadis on the
14 internet who consider themselves to be friends of Osama Bin
15 Laden about jihad and about the Mujahideen, and giving them
16 answers which are beneficial to Al-Qaeda, at this very moment
17 right now.

18 So it really depends on what questions, what context,
19 and what book.

20 Q. Now, Abu Muhammad al-Maqdisi, let's go back into who he
21 is. He's been in prison?

22 A. That's right, yes.

23 Q. How many years was he in prison?

24 A. Gosh, at least ten years.

25 Q. And he was released in --

1 A. 2005, I believe.

2 Q. And what was he charged with?

3 A. I'm not familiar with the exact charge, but I can tell
4 you that the conditions under which he was arrested were
5 there was a series of cinema bombings, movie theater bombings
6 and other terrorist attacks inside of Jordan. The JID,
7 Jordanian Intelligence Services and the police began
8 investigating this.

9 They traced this back to a network of Salafi-Jihadis
10 whom they blamed Abu Muhammad al-Maqdisi, among others, for
11 inciting. Al-Maqdisi was arrested as a state security
12 threat, and he was held in prison.

13 Q. And he was released; correct?

14 A. I believe in 2005, although again I'm not exactly sure
15 about the conditions of that release. I believe it's a
16 supervised release.

17 Q. And then he was again rearrested?

18 A. Yes.

19 Q. What was the basis for him --

20 A. I'm sorry, I don't know the conditions under which he
21 was arrested.

22 Q. And then now he's again rereleased?

23 A. Yes. It happens when clerics continually violate the
24 line between what is, you know, speaking your views and what
25 is inciting violence, it happens that the government of

1 Jordan has no choice but to step in and take matters into
2 their own hands.

3 Q. Is that common in Arab countries or Muslim countries,
4 that scholars or Islamic activists are arrested because their
5 message is considered a threat?

6 A. Well, it depends on which countries and it depends on
7 what kind of activists.

8 There are plenty of countries where Islamic activists
9 are free to live and preach.

10 I mean, Saudi Arabia, the kingdom of Saudi Arabia, which
11 is the home of Islam, the Laga Armain, the Land of the Two
12 Holy Places, you have got dozens of clerics that live there
13 who preach jihad, who preach about the Mujahideen, and who
14 live in relative freedom.

15 I mean, we just went over a list of them last week where
16 there was at least three or four different clerics who I'm
17 familiar with who have openly espoused support for Al-Qaeda
18 and live in freedom. The same goes for the UAE, Oman,
19 Bahrain, Gudur.

20 The only places where Islamic activists have serious
21 problems with the authorities are Egypt, Jordan sometimes,
22 and Syria. And Libya. Excuse me, Libya.

23 Q. Abu Muhammad al-Maqdisi was charged in relation to a
24 terrorism case, correct, Bayat al-Imam?

25 A. That's correct, yes. That was the first case in '94,

1 that's correct, yes.

2 Bayat al-Imam was the group that Zarqawi was a part
3 of. This was a group that had formed back in Afghanistan in
4 the early 1990s and had come to Jordan again with the hopes
5 of establishing an Islamic government, upsetting the
6 Israeli-Palestinian peace accord. The name of the group is
7 Bayat al-Imam.

8 Q. He was released eventually from that, Abu Muhammad
9 al-Maqdisi I mean?

10 A. Yeah. I mean, I believe after a decade, yes.

11 Q. So he was held without being convicted?

12 A. I don't know what the exact conditions were of the legal
13 case, to be honest. I know what he was accused of, I know
14 what he's written of. I don't know the details of his legal
15 case in Jordan, though.

16 Q. On these -- now, Abu Muhammad al-Maqdisi has a website;
17 correct?

18 A. He has multiple websites now, yes.

19 Q. Could you name them?

20 A. Sure. Al-Maqdisi.com, Tawhed.ws, Tawhed.net, Abuqatada
21 dot something. There are several of them, yes.

22 Q. Now, these websites, as well as Tibyan Publications, a
23 lot of the material and literature on these websites, is it
24 of a debate type of nature, that there is a lot of online
25 debate on --

1 A. There is a lot of stuff on there, but there is
2 everything from tactical advice about how to commit terrorist
3 acts, about how to set off bombs, to the logistics of
4 jihad.

5 I just testified in a case a few months ago involving an
6 individual who used the al-Maqdisi.com website to post a
7 guide book on how to commit suicide operations.

8 So there is a large breadth of information. But the
9 information all deals with Salafi Jihadi -- the mindset of
10 Salafi-Jihadis. Everything from the tactics, the philosophy,
11 the ideology, but it's all on there.

12 Q. On the Tibyan Publications publications, let me be more
13 specific, are there any books published or articles published
14 on how to commit a terrorist act?

15 A. Yes. *The Islamic Permissibility of Self-Sacrificial*
16 *Operations, Suicide and Martyrdom*, it explicitly states --

17 Q. Is that how to?

18 A. Yeah, it explicitly states if you want to become a
19 martyr, the modern form of martyrdom is to pack a suitcase
20 full of explosives, to go into a crowd, and to detonate it in
21 a crowd of people, and that is the modern definition of
22 martyrdom.

23 That's straight out of the fatwah. That's both from the
24 Arabic and the English versions.

25 Q. Now --

1 A. I mean, it doesn't tell you how to build the bomb, but
2 that kind of material you can get from anywhere. I mean,
3 that's not something you need any kind of specific website
4 for. The tactics are what's important.

5 Q. This book that you mentioned, *The Self-Sacrificial*
6 *Operations in Islam*, is this a book on a legal fatwah as in
7 the position of self-sacrificial operations or otherwise
8 known as suicide operations?

9 A. A legal fatwah -- first of all, you have to be very
10 careful. The person that issued this is not a cleric. The
11 person that issued this is the commander of Al-Qaeda of
12 Saudi Arabia, Shaykh Yusuf Al-Uyayree, the man who founded
13 Al-Qaeda in Saudi Arabia, who was a former instructor at an
14 Al-Qaeda camp in Afghanistan, and who participated in
15 Blackhawk Down in 1993 in Somalia.

16 This person is a military figure with no clerical
17 credentials. This is someone who cannot issue a fatwah
18 except if it's a political fatwa.

19 Now, the fatwah itself, if you want to call it a fatwah,
20 it had religious elements, sure, but it was tactical as
21 well. It was written by someone was a tactical Al-Qaeda
22 leader and it was written from a political perspective.

23 There is religious justifications, but to call that a
24 religious document is I think entirely misunderstanding who
25 Shaykh Yusuf Al-Uyayree is, who he was, and what he did.

1 Q. Is he considered a scholar?

2 A. No, absolutely not. The only people who consider him a
3 scholar were Al-Qaeda, that's it. Nobody, nobody in the
4 mainstream Islamic community considers Yusuf Al-Uyayree a
5 scholar. In fact, I doubt most moderate Muslims even know
6 who Shaykh Yusuf Al-Uyayree is.

7 Q. Are you -- on the websites, is he called a commander or
8 is called a shaykh?

9 A. He is called both a commander and a shaykh. He's called
10 an ameer, he's called a shaykh, he's called imam. He's
11 called all these things, but this is just euphemisms.

12 The only people who see him as a scholar are
13 Al-Qaeda. There is not -- I would challenge you to find a
14 single mainstream Muslim who would identify Shaykh Yusuf
15 Al-Uyayree as a scholar.

16 In fact, again, I would find it hard to believe that
17 most moderate Muslims even know who Yusuf Al-Uyayree is.
18 He's an Al-Qaeda military commander. He has no clerical
19 qualifications whatsoever. He is someone who was taught in
20 the field.

21 He was in prison in Saudi Arabia for four years. He was
22 imprisoned by the Saudis in 1995 after a series of car bombs
23 went off in Riyadh. They don't usually do that to
24 clerics. This is someone who is an Al-Qaeda military
25 commander.

1 Q. Are you familiar with a scholar, mainstream scholar
2 named Anwar al-Awlaki?

3 A. He is also not mainstream, but, yes, I'm familiar with
4 Shaykh Anwar al-Awlaki.

5 Q. When you say he's not mainstream, I understand that's
6 your opinion. But isn't it true if anyone goes onto the
7 websites or any mainstream Islamic catalogues, bookstores,
8 they will find a huge section on Anwar al-Awlaki lectures?

9 A. It entirely depends what you define as mainstream.

10 In the 9/11 Commission Report, it is alleged that
11 Anwar al-Awlaki had contacts with two 9/11 hijackers in
12 San Diego, California, and he apparently provided them with
13 clerical instruction and advice.

14 Anwar al-Awlaki has been imprisoned by the government of
15 Yemen, is no longer allowed in the United States. He does
16 not come here anymore because he would be arrested if he
17 was.

18 Anwar al-Awlaki in the last two weeks alone has issued
19 two fatwahs openly endorsing jihad and the Mujahideen, not in
20 a spiritual sentence, not in a generic sense, but
21 specifically saying Al-Qaeda in Yemen, the Mujahideen are
22 winning, that's great, Allahu Akbar.

23 He is a jihadi cleric, he is not a mainstream cleric.
24 He's only a mainstream cleric among Salafi-Jihadis.

25 I mean, again, this is no secret. I mean, you can go to

1 his website. The number one entry on his website right now
2 is Jihad in Yemen: "The Mujahideen Victories Against the
3 Government, Al-Qaeda is Winning." It's in English.

4 Q. Prior to the last two weeks or one year, let's say --

5 A. Okay.

6 Q. -- was Anwar Al-Awlaki considered one of the major North
7 American Islamic scholars?

8 A. Well, North American -- he's not allowed in
9 North America anymore. He's not allowed in North America
10 anymore. He's banned. If he comes here, he's going to be
11 arrested.

12 He stays in Yemen right now because of the fact that he
13 was arrested there. I don't believe the Yemeni government is
14 even willing to allow him to leave.

15 Now when he addresses conferences outside of Yemen, he
16 has to speak via videoconference, because most of the time
17 he's not allowed to go to the countries where he's giving
18 these speeches.

19 Even in Yemen there is pressure on him right now to stop
20 saying what he's saying. So again, if that's mainstream, I
21 would love to know what extreme is.

22 Q. Are his lectures available publicly in this country?

23 A. There are lectures available of Osama Bin Laden, of
24 Ayman al-Zawahiri, of Anwar al-Awlaki, of dozens, of hundreds
25 of clerics that are available in this country. They are

1 available on the internet, they are available in
2 bookstores.

3 There are lectures by Al-Qaeda military commanders
4 speaking here in the United States that are available here in
5 this country. That doesn't mean anything.

6 Q. In Islamic conferences, mainstream -- ISNA, for example,
7 Islamic Society of North America, so on and so forth, they
8 have conventions annually or so. Anwar al-Awlaki lectures
9 are available at these.

10 A. I haven't attended an ISNA conference in years.
11 I couldn't tell you.

12 Q. Are you familiar -- okay, Anwar al-Awlaki is a scholar;
13 correct?

14 A. That's a very subjective question. I regard anyone who
15 writes or translates a lecture, like "Constants on the Path
16 of Jihad," and explains that, well, this is what
17 Yusuf Al-Uyayree wrote in Saudi Arabia and here is how you
18 would adapt it if you were living in Europe, that's
19 tactical advice for people that are looking to emulate
20 Shaykh Yusuf Al-Uyayree who are living in Europe, tactical
21 advice for people that are looking to emulate an Al-Qaeda
22 commander who are living in Europe.

23 If that's what you consider a scholar, he's a premier
24 scholar.

25 Q. Did he study by himself or did he study from the

1 Islamic --

2 A. Oh, yeah, sure, he's formally studied Islam. But to be
3 a scholar of Islam requires much more than simply to study
4 material.

5 Q. Of course. Is he a respected scholar in North America?

6 A. He's respected among Salafi-Jihadis.

7 Q. And no one else respects him?

8 A. He is respected among hard-core Salafis and
9 Salafi-Jihadis. He's not a mainstream scholar.

10 Again, he's not -- Anwar al-Awlaki is not a mainstream
11 scholar. Mainstream scholars don't have to worry about being
12 arrested when they enter the United States.

13 Q. When was -- when did he leave the United States?

14 A. I think in 2002 or 2003.

15 Q. But prior to that, was he considered a mainstream
16 scholar?

17 A. I honestly -- again, it really depends on your
18 perspective. Among Salafi-Jihadis he's always been
19 considered to be a very important key scholar. But outside
20 of that narrow Salafi-Jihadi school, I would believe that
21 most people probably have not heard of him or have only heard
22 of him in abstract.

23 He's not a mainstream scholar. He's not someone that a
24 lot of people read. He's someone that a lot of
25 English-speaking Salafi-Jihadis read, that's true.

1 Q. Have you heard of IslamicBookstore.com?

2 A. No, but I'm sure it's an online bookstore that sells
3 books about Islam.

4 Q. It's the largest online bookstore.

5 Is it true that if you go to their catalogue, there is a
6 whole section on Anwar al-Awlaki lectures?

7 A. I have no idea.

8 Q. The point I was trying to get at is do you know that
9 Anwar al-Awlaki called Yusuf Al-Uyayree a brilliant scholar
10 and so on and so forth?

11 A. I believe he did, yes. But again, the reason is because
12 Awlaki took Al-Uyayree's book, *Constants on the Path of*
13 *Jihad*, which instructs people about how to become Mujahideen
14 in their own ways, and translated that into English and
15 prepared that and edited that specifically for a
16 North American and European audience.

17 For instance, one of the things that he wrote in the
18 book was it is -- what Usuf Al-Uyayree wrote in his book was
19 that if you are a Muslim and you are a supporter of jihad or
20 true to Islam, you have to wage jihad no matter where you
21 are, no matter what society you are in, no matter what the
22 conditions you are in.

23 And Al-Awlaki wrote in his thing what Yusuf Al-Uyayree
24 wrote means that if you are living in Europe or you are
25 living in North America or wherever you are living, you can't

1 adjust your circumstances. You have to pursue jihad no
2 matter what.

3 Now, anyone that says that if you are living in
4 North America or Europe and that that means you still
5 participate in jihad no matter what, that's not a mainstream
6 view. Someone who is saying you should commit acts of
7 violence if you are living in a western society, that's not a
8 moderate or mainstream view, and that's not a view that most
9 Muslims would adhere to or accept.

10 And I think it's insulting to many Muslims that that's
11 an idea most Muslims believe or hold to their hearts.

12 Q. Now, you said -- what's the topic of this book,
13 *Constants of Jihad*, you mentioned?

14 A. The topic is *Constants on the Path of Jihad*, for those
15 that are following the path of jihad or wish to follow the
16 path of jihad, these are the mileposts on the road, these are
17 the goal signs, this is what you should be doing in order to
18 make sure that you are following down the path of a true
19 Mujahid.

20 Q. What are the topics of the chapters let's say covered in
21 this?

22 A. I don't know the chapters offhand.

23 Q. Because you said earlier that this is -- right now you
24 just said these are the things you should be doing. Like
25 what?

1 A. Again, the main focus of *Constants on the Path of Jihad*,
2 the main theme is that no matter where you are, no matter
3 what society you are in, no matter what the context of your
4 life is, you cannot adjust jihad to fit your life. Jihad has
5 to adjust your life.

6 In other words, you have to modify your existence in
7 order to accommodate the necessity of holy war, of physical
8 violence, and that it's incumbent on Muslims everywhere, not
9 just on the battlefield, not just in Al-Qaeda, but all
10 Muslims to participate in violent acts.

11 Again, that's not a view that I think most Muslims would
12 accept either for themselves or for their community.

13 Q. Now, the book you mentioned earlier, *The*
14 *Self-Sacrificial Operations in Islam*, this is a book which
15 provides -- isn't it true the topic of this book is to
16 provide legitimization or justification in Islamic law,
17 through the evidences of Islamic law, the Quran, the Sunnah,
18 the Qiyas, so on and so forth, and verdicts of scholars, to
19 provide a justification for self-sacrificial operations?

20 A. There is nothing in the Tafsir and there's nothing in
21 the Quran about taking a suitcase full of explosives and
22 detonating it in a crowd of people, but that is in the
23 *Islamic Permissibility of Self-Sacrificial Operations*,
24 *Suicide or Martyrdom*. It's in both the Arabic and it's in
25 the English version that was translated by Tibyan.

1 Now, that's not religious advice, that's not School of
2 Islam advice. That's tactical advice about how to carry out
3 an act of violence, no matter how you look at it.

4 There is nothing in the Quran and there's nothing in the
5 Tafsir about blowing up a suitcase full of explosives,
6 period. It's not there. That is practical advice about how
7 to carry out a terrorist act.

8 Q. I think you are not being clear -- or perhaps my
9 question is not clear.

10 A. I mean, again, it's very clear. This is a document
11 which provides legitimation for suicide operations and
12 explains to people, Just in case you have any question about
13 what we are talking about in terms of a suicide mission, we
14 are not talking about here in terms of running into the front
15 line with a gun, we are not talking about bayoneting someone.
16 We are talking about the modern form of martyrdom is to take
17 a suitcase full of explosives and detonate it in a large
18 crowd of people. That's what it says in the document.

19 Q. It says -- does that give -- in the document, does it
20 say to take a suitcase full --

21 A. Yes, it says specifically a suitcase full of explosives
22 in the English version.

23 Q. Does it also say in the English version about if there
24 is a weapons cache or something to that effect and someone, a
25 Mujahideen would go on a mission to attack that, to destroy

1 the weapons of the enemy and thereby killing themselves in
2 that process?

3 A. Perhaps, but that's also tactical advice that has
4 nothing to do with the Quran or Tafsir. That's practical
5 advice about how to commit a terrorist act. Again, it's more
6 tactical advice.

7 This is not religious stuff. This is -- there is
8 religious stuff in there, and there are quotations from the
9 Quran, there are quotations from Hadith. But the idea is
10 that this is supposed to be a comprehensive look at the idea
11 of self-sacrificial operations. And it's no wonder, because
12 the person who wrote it was a tactical Al-Qaeda commander.

13 Q. Those two examples that you gave, are those -- when they
14 are mentioned in the book, are they mentioned by way of
15 giving an example of what is an example of a self-sacrificial
16 operation, or is that the topic of the book as in these are
17 the ways that you can do -- you can actually go out and
18 perpetrate or commit a self-sacrificial --

19 A. Well, it's only a ten-page manual, so if that takes
20 up -- or it's only a ten- or twenty-page manual, so if that
21 takes up three or four pages, that's a lot of it.

22 Now, whether or not there are examples or not, that's
23 tactical advice.

24 Q. You are saying that the book, *Islamic Ruling on the*
25 *Permissibility of Self-Sacrificial Operations*, is a ten-page

1 book?

2 A. A ten- or twenty-page, depending on which copy you have.

3 Q. From Tibyan Publications?

4 A. I'm not sure of the length of the Tibyan version. I'm
5 referring to one of the Arabic versions I have.

6 Q. But do you read Arabic?

7 A. Not fluently, no, but I do have a translator who sits
8 right next to me. So it doesn't really matter whether it's
9 in Arabic or English.

10 Q. Do you know how long the English -- the Tibyan
11 Publications copy now I'm talking about is?

12 A. I couldn't tell you the exact page number, the exact
13 number of pages, no, I don't know.

14 Q. Because the way you are describing it, it really seems
15 you are describing a completely different book. We will be
16 able to --

17 A. Well, that's your opinion. But I should emphasize that
18 that's not -- I mean, these are not issues that are -- if you
19 read the book, it's right in there.

20 And again, to tell someone to blow themselves up with a
21 suitcase full of explosives, no moderate Islamic cleric would
22 ever advise anything like that, no mainstream Islamic cleric
23 would even suggest something like that.

24 And what's more is that if you suggest something like
25 that along with telling someone that carrying out suicide

1 missions is part of their Islamic duty, what do you expect
2 that their response is going to be? Their response is going
3 to be following the examples that they are given.

4 They are being told -- people are being told in this
5 document that it's their religious obligation if they want to
6 go to paradise and avoid hell is that they must go out and
7 commit suicide operations. And this document suggests that
8 the only way of committing a suicide operation or a martyrdom
9 operation is to blow yourself up or to somehow carry out a
10 deed of Islam where you are sacrificing yourself in a violent
11 way in a contemporary context.

12 That's tactical advice. I mean, that's giving --
13 inciting someone and giving people tactical ideas about how
14 to execute it.

15 Q. You just mentioned that this book says that if someone
16 wants to go to paradise, this book states -- you just said
17 that this book states if someone wants to go to paradise, it
18 is their religious obligation to blow themselves up?

19 A. In the view of this, if you do not -- in the view of
20 this document, okay, if you are not working towards the
21 greater benefit of Islam, right, if you are not struggling
22 for jihad, if you are not working to support the Mujahideen,
23 then you are not a real Muslim, then you are not adhering to
24 Islam; all right?

25 And if you are going to support the jihad and the

1 Mujahideen, you should be willing to commit any act, any
2 sacrifice that is necessary, including giving up your own
3 life, if that's what is necessary for the greater cause of
4 Islam.

5 In this case what it is suggesting is that the
6 contemporary form of martyrdom is to blow yourself up with a
7 suitcase full of explosives. Not to blow yourself up and
8 that's it, but specifically with a suitcase full of
9 explosives.

10 That is not in the Quran and it's not in the Hadith, and
11 no moderate scholar, no mainstream scholar would those words
12 ever come out of their mouth. Explosives, that would never
13 come out of a mainstream scholar's mouth, period.

14 MR. SADEQUEE: Could I speak with my counsel?

15 BY MR. SADEQUEE:

16 Q. Okay. How long have you monitored the Tibyan
17 Publications website?

18 A. I started monitoring Tibyan Publications in general in
19 approximately 2004, mid2004.

20 Q. Have you read all the material on it?

21 A. I don't know if I have read every single one, but I have
22 read a lot of material off of Tibyan, yes.

23 Q. Now, you mentioned I believe on Friday regarding
24 al-Jamaa'atu I-Salafiyyatu li I-Da'wati wa I-Qitaal?

25 A. The GSPC, The Salafist Group for Prayer and Combat in

1 Algeria, which is a designated foreign terrorist
2 organization.

3 Q. Now, they changed their name; correct?

4 A. That is correct, yes. They changed it to al-Tanzim
5 al-Qadai fi Bilad al-Maghrib, the Al-Qaeda Network in the
6 Land of the Maghreb, Maghreb meaning North Africa.

7 Q. Were these, the GSPC, are they -- or were they -- what
8 were they before they changed their name?

9 A. Before they changed the name to the GSPC?

10 Q. No, before they became AQ al-Maghreb, Al-Qaeda
11 al-Maghreb, what were they?

12 A. What do you mean, what were they?

13 Q. The GSPC, were they a big organization?

14 A. This is again a subjective question. What do you mean
15 by big? It's a couple hundred guys who are fighting a jihadi
16 conflict against the Algerian government, the Algerian
17 military, moderate clerics, civilians, anyone else who got in
18 their way.

19 They carried -- in December 2007, they carried out a
20 massive suicide bombing against the United Nations in
21 Algiers, killed a whole bunch of people. They are a jihadi
22 organization with roots from Afghanistan.

23 Q. And when they changed their name or they pledged
24 allegiance to Al-Qaeda or whatever, was this just an online
25 announcement, or did they actually have contacts where they

1 actually did formally announce their allegiance?

2 A. When you say formal contacts, you mean formal contacts
3 over the telephone or e-mail, in person?

4 Q. For instance, when Zarqawi's group, which was previously
5 Jamaat al-Tawhid wal-Jihad, before it became Al-Qaeda in Iraq
6 or the Land of the Two Rivers, they had -- is it true that
7 Zarqawi released an announcement or someone from Al-Qaeda in
8 Iraq released an announcement saying that we have contacted
9 Osama Bin Laden and we are pledging our allegiance to
10 Osama Bin Laden --

11 A. That is correct.

12 Q. -- and now we are going to become Al-Qaeda in -- so it
13 wasn't just someone posting online we are Al-Qaeda in Iraq?

14 A. No, it was a formal process.

15 Q. Now, with GSPC, something similar to that?

16 A. Yes. There was a speech given by first
17 Ayman al-Zawahiri, there was another speech given by another
18 individual by the Abu Laith al-Libi, and then a statement
19 that was issued in response from the ameer of the GSPC, who
20 is known as Abu Musab Abdel Wadoud.

21 Q. So it was official when this was --

22 A. I mean, these were known organizations that preexisted,
23 so, yes.

24 Q. With regards to what was shown earlier, Al-Qaeda in
25 Northern Europe, are you familiar with any of any such

1 process taking place?

2 A. Well, I saw that communicated when it was posted on the
3 internet and I read it, but the organization itself only
4 exists in the minds of the people who created it.

5 Q. Okay. So it exists nowhere else?

6 A. Well, the people that created it very much believed that
7 it existed because they were going to make it exist. But it
8 was a new organization which they were attempting to
9 establish.

10 Q. But no one, such as Ayman al-Zawahiri or Osama Bin Laden
11 or any other -- Abu Laith al-Libi --

12 A. I mean, if you are asking whether or not they ever
13 endorsed it, they never had a chance. If the organization
14 had carried out an act of violence, perhaps they would have
15 endorsed it.

16 But Al-Qaeda doesn't endorse groups until they carry out
17 acts of violence and establish themselves on the scene. Now,
18 that happens very frequently. Zarqawi's group is a good
19 example.

20 When Zarqawi's group first started up in Iraq, Zarqawi
21 was kind of seen as a nobody, as somebody who was just a
22 small fish, so Al-Qaeda didn't want to give them the official
23 credentials.

24 But once Zarqawi established himself with acts of
25 violence and killed a whole bunch of people and took control

1 of large portions of Iraq, then all of the sudden Al-Qaeda
2 was very eager to bring them into the fold.

3 That's the way it usually happens. An organization
4 starts up, it establishes itself, it carries out acts of
5 violence, it proves itself in the world of Salafi Jihad and
6 to Al-Qaeda, and eventually then a merger takes place.

7 But it's very rare for a group simply to emerge and
8 immediately align itself. These groups emerge organically.

9 Q. You mentioned also in the list of scholars whom Tibyan
10 Publications considers as scholars the Abdullah ar-Rashood
11 was a military leader?

12 A. The only video of Shaykh Abdullah ar-Rashood that exists
13 is of him sitting on a table with an antitank missile on a
14 table in front of him and a machine gun sitting behind him
15 while he talks about knocking down large buildings.

16 Once again, there is no mainstream or moderate cleric in
17 any religion on this earth that I can think of who would
18 videotape themselves sitting at a desk with an antitank
19 missile sitting in front of them.

20 He was an Al-Qaeda commander, he was killed in Iraq
21 fighting U.S. forces. When he was killed fighting U.S.
22 forces in Iraq, Al-Qaeda in Iraq issued a statement
23 announcing his death and announcing that he had been a senior
24 figure in Al-Qaeda in Iraq and in Saudi Arabia, and that he
25 had gone down shooting.

1 That's not a scholar. That is a military figure.

2 Q. Okay. You have heard the lecture "And Incite the
3 Believers"?

4 A. Yes, I have seen it.

5 Q. Okay, you have seen it. And you say that he talks about
6 knocking down buildings. Is that the subject of the --

7 A. It's one of the subjects, yeah. The idea is inciting
8 the believers to jihad, and he mentions that one of the
9 aspects of jihad is shaking the infidels and knocking down
10 large buildings, specifically knocking down large
11 buildings.

12 Again, the translation is done by Tibyan. I'm just
13 giving you the translation that was done by Tibyan. You can
14 go back to that and see, it's right there.

15 It's on my -- I even took the section where he's talking
16 about this and put part of this on my website as an example
17 that this individual just was killed in Iraq, he's a senior
18 Al-Qaeda figure, and this is what he was saying in terms of
19 his operational mandate.

20 Q. Who is be Abdullah ar-Rashood?

21 A. He's a senior figure of Al-Qaeda in Saudi Arabia.

22 Q. Prior to that?

23 A. He was a Salafi-Jihadi cleric who help found Al-Qaeda in
24 Saudi Arabia. He was nobody before he helped found Al-Qaeda
25 in Saudi Arabia. Nobody knew who he was. He was a nobody

1 Salafi-Jihadi cleric in Saudi Arabia who established himself
2 primarily by aligning himself openly and visibly with
3 Al-Qaeda -- Tanzim al-Qaida fi Bilad al-Haramain. The
4 Al-Qaeda Network in the Land of the Two Holy Places, in the
5 land of Saudi Arabia.

6 That's what made him famous. That's what he's known
7 for. He's not known for anything else but that. In fact,
8 the lecture -- again, the lecture that you can almost always
9 find of his is "And Incite the Believers," the one where he
10 was already a most wanted figure, one of Saudi Arabia's
11 twenty-five most wanted.

12 Saudi Arabia doesn't generally put clerics on their
13 twenty-five most wanted list. They only put tactical
14 military figures.

15 That's why some of the other people who were on their
16 list, like Shaykh Nassar bin Al-Fahd, who is a cleric and who
17 wrote such fatwahs as "The Use of Weapons of Mass Destruction
18 Against the United States," which you could argue are pretty
19 violent fatwahs, yet this is someone who was never added to
20 their twenty-five most wanted list because he's a cleric.

21 But Abdullah ar-Rashood was added to that list. He is
22 not a cleric. He is a jihadi leader. He is a commander in
23 the field. The fact that he's had clerical training, that's
24 just a footnote on his life.

25 Q. What's the basis for you saying that he's a military

1 leader?

2 A. He was killed fighting U.S. forces in Iraq. When he was
3 killed, Al-Qaeda in Iraq, Zarqawi's organization, put out a
4 statement explaining that Ar-Rashood was an ameer in
5 Al-Qaeda, was fighting with U.S. forces, and had gone down in
6 a hail of bullets.

7 Q. Now, Al-Qaeda has -- and a lot of these jihad
8 organizations, they also have a branch called ahir tal
9 shariah or something, a legal committee; correct?

10 A. The Shariah Council.

11 Q. Yes.

12 A. That's correct, yes.

13 Q. So are these military leaders, or are these clerics and
14 scholars?

15 A. I don't think you could call them clerics and
16 scholars. They are people who hold guns, they hold weapons,
17 they shoot.

18 The fact that they also issue verdicts, Islamic verdicts
19 about killing other people is just part of what they do. But
20 most of the people that you see on these councils, even when
21 you see them in videos, are carrying weapons, are wearing
22 camouflage, and are in the field with the Mujahideen.

23 If they are shooting, they are not clerics. They are
24 militants.

25 Q. Are you familiar with Abu Umar As-Saif?

1 A. Yes.

2 Q. Who is that?

3 A. Shaykh Abu Umar As-Saif was the head of the Shariah
4 Council of the Islamic Army of the Caucasus. Abu Umar
5 As-Saif is a Saudi national who traveled to Chechnya in
6 1995.

7 He both issued verdicts for the Islamic Army authorizing
8 them to carry out attacks on Russian forces, to kill
9 Russians, even to launch operations inside of the former
10 Soviet Union. He authorized the killing of Russian prisoners
11 of war. And he was fighting in the field.

12 I was just watching a video of him yesterday holding a
13 weapon, wearing camouflage, sitting alongside Shamil Basayev,
14 the person who organized the 2005 Beslan school
15 hostage-taking massacre.

16 Obu Umar As-Saif was the one justifying the acts like
17 the massacre at Beslan. He was Shamil Basayev's religious
18 interpreter slash contact with Al-Qaeda in Saudi Arabia.

19 Abu Umar As-Saif was so influential that in 2004, he was
20 featured in a video produced by Al-Qaeda in Saudi Arabia
21 where even though he was all the way over in Chechnya, his
22 advice for the Mujahideen in Iraq and Saudi Arabia was being
23 put directly into Al-Qaeda propaganda.

24 Q. Do you know who he studied with or what kind of --

25 A. Yes, he studied under Shaykh Ibn al-Uthaymeen in

1 Saudi Arabia, who was one of Saudi Arabia's most prominent
2 clerics and who has also issued fatwahs endorsing jihad and
3 Mujahideen.

4 Q. He's the number two scholar in Saudi Arabia, or was the
5 number two scholar in Saudi Arabia.

6 A. Was, but, yes. Like I said, he's also issued fatwahs
7 about jihad and Mujahideen, specifically in Chechnya.

8 Q. Uthaymeen is a mainstream scholar in Saudi Arabia?

9 A. He's mainstream in Saudi Arabia, but I don't think you
10 could consider him mainstream necessarily outside of
11 Saudi Arabia.

12 Q. Outside of the Salafi-Jihadi community?

13 A. I would say the Salafi community. He's pretty
14 influential in the Salafi community in general, but he's also
15 influential in the Salafi-Jihadi community very specifically,
16 yes.

17 Primarily because of the fact that, unlike some senior
18 clerics in Saudi Arabia, he has not held back his tongue when
19 it comes to certain aspects of jihad and Mujahideen.

20 I'm sorry, Ibn Uthaymeen is I-b-n U-t-h-a-i-m-e-e-n.

21 Q. The discussions on these forums and debates on jihad,
22 would you agree that they cannot be understood with being
23 taken out of -- they cannot be understood in a vacuum, but
24 have to be read in context with regional history?

25 A. That's a subjective question. I think that's really a

1 question for Muslims more than it is for me, or imam, Islamic
2 clergy, really, not for me.

3 Q. Have you -- how many books has Tibyan Publications
4 published?

5 A. I don't know the total number, but it's up there. It's
6 between I think 20, 25, 30. They still publish stuff, so
7 it's growing.

8 Q. And articles?

9 A. Sure, articles, fatwahs, books, yes.

10 Videos I should add. Sorry.

11 Q. Al-Qaeda in Saudi Arabia, they have or they had two
12 magazines; correct?

13 A. Al-Qaeda in Saudi Arabia did have two magazines, *Sawt Al*
14 *Jihad*, the *Voice of Jihad Magazine*, and *Al Battar*, the
15 military training manual, which was named actually after
16 Shaykh Yusuf Al-Uyayree whose nickname was Al Battar, the
17 slicing sword, the blade.

18 Q. Could you give a description of what these two magazines
19 are?

20 A. They are actually very similar, to be honest. *Sawt Al*
21 *Jihad* was supposed to be the official correspondence of
22 Al-Qaeda in Saudi Arabia, messages from senior Al-Qaeda
23 leaders, explanations of past operations, et cetera.

24 *Al Battar* was supposed to be a training manual for how
25 to carry out missions. There were schematics for how to

1 carry out an assassination mission on a particular Saudi
2 leader. There were explanations on how to disassemble and
3 reassemble particular weapons common to the Mujahideen,
4 explanations of urban warfare written by senior Al-Qaeda
5 leaders.

6 But in practice you would find bits and pieces of these
7 articles spread throughout. In other words, you would find
8 content that really should have been in *Al Battar* in *Sawt Al*
9 *Jihad*. You would find material relating to tactical
10 operations in *Sawt Al Jihad*.

11 And vice versa. You would find stuff written by senior
12 Al-Qaeda leaders that wasn't necessarily tactical, but more
13 philosophical, which was also in *Al Battar*. It was a mix.

14 Q. And did Tibyan Publications translate any *Al Battar*
15 material?

16 A. I'm not familiar actually, not in a formal level that
17 I'm familiar with. But perhaps they did. I don't know.

18 I should add that when you say Tibyan, do you mean the
19 organization or the forum? Because there were many articles
20 from *Sawt Al Jihad* and *Al Battar* which were translated into
21 English and posted on the Tibyan Publications forum. I don't
22 know if they were ever officially released as Tibyan
23 Publications marked documents, however they were being posted
24 by apparent administrators on the forum.

25 So in other words, you could say that administrators of

1 Tibyan were actively disseminating English translations of
2 articles from *Al Battar* and *Sawt Al Jihad* to people, part of
3 their network, yes.

4 Q. But those could have been translated by anyone;
5 correct?

6 A. Well, that's true, but they were being disseminated by
7 the administrators of Tibyan and they were being headlined as
8 English translation of *Al Battar* number whatever.

9 Q. But these translations are available from websites such
10 as Eprism or so, which are --

11 A. I don't really know where they got them from. But I do
12 know that the English translations were posted on the Tibyan
13 Publications forum by administrators advising people, Hey,
14 *Al Battar* No. 11, here is an article by Abdel Aziz al-Muqrin,
15 "War Inside the Cities, Urban Warfare," here you go.

16 There were many articles like that which translations
17 were posted. Did Tibyan do the translation? I don't know.
18 The point is that they -- regardless, they were disseminating
19 it to their network, yeah.

20 Q. Are you familiar with a Shaykh Abu Basir?

21 A. Abu Basir al-Tartusi?

22 Q. Yes.

23 A. Yes, I am.

24 Q. Who is he?

25 A. Abu Basir al-Tartusi is a Salafi-Jihadi cleric who is

1 based in the United Kingdom. He frequently contributes
2 fatwahs and other reactions to Islamic events or current
3 events on the internet.

4 One of the more famous events that he responded to, he
5 issued a fatwah endorsing the July 7, 2005, bombings in
6 London. The fatwah was eventually reposted on the website of
7 the Salafist Group for Prayer and Combat, GSPC.

8 Q. Could you repeat -- I don't know if I heard you
9 correctly. Did you say that Shaykh Abu Basir endorsed the
10 July 7th --

11 A. He wrote a document which appeared to endorse, yes,
12 which appeared and was posted on the website of the GSPC. I
13 believe it's still available on their current website.

14 Q. Is this -- I'm aware that he actually publicly
15 criticized --

16 A. He may have also, but he did write this document, and it
17 was posted on the website.

18 Q. When was this posted?

19 A. It was shortly after 7-7. August of 2005.

20 Q. Do you remember the title of that document?

21 A. Not offhand. But I can give you a copy of it. I have
22 copies of it.

23 Excuse me, by the way Tartousi is T-a-r-t-o-u-s-i, Abu
24 Basir, A-b-u B-a-s-i-r.

25 THE COURT: We need to move on, Mr. Sadequee.

1 BY MR. SADEQUEE:

2 Q. Are you familiar with -- what is Markaz ud-Dawa?

3 A. Markaz-ud-Dawa -- Markaz-ud-Dawa-wal-Irshad; correct?

4 Markaz-ud-Dawa-wal-Irshad is the -- or was, excuse me, the
5 political wing of Lashkar-e-Tayyiba. It's now known as
6 Jamat-ud-Dawa.

7 Q. Now, Markaz-ud-Dawa, they have a military branch?

8 A. They have a what?

9 Q. A military branch or a militant branch?

10 A. The difference between Markaz-ud-Dawa and Lashkar is in
11 writing only. There is no difference. The spokesman for
12 Markaz-ud-Dawa is Abdullah Muntazir. He's also the spokesman
13 for Lashkar-e-Tayyiba. Hafiz Mohammed Saeed is the head of
14 Markaz-ud-Dawa. He's also the head of Lashkar-e-Tayyiba.

15 Lashkar-e-Tayyiba was formed when Markaz-ud-Dawa went
16 into Afghanistan and identified local Pakistani military
17 figures fighting in the jihad there who it can partner up
18 with.

19 In essence, there would be no Lashkar-e-Tayyiba without
20 Markaz-ud-Dawa. All the senior leadership of
21 Lashkar-e-Tayyiba is the leadership of Markaz-ud-Dawa.

22 Q. What's the meaning of Markaz-ud-Dawa?

23 A. Markaz-ud-Dawa means the missionary center. The Dawa
24 center, missionary center.

25 Q. Dawa also mean preaching; correct?

1 A. Dawa means missionary work. Dawa can include preaching,
2 it can include jihad, it can include a lot of different
3 things depending on what your definition of missionary work
4 is.

5 Some Salafi-Jihadis believe that jihad is an integral
6 element of Dawa. Some other moderate mainstream Muslims do
7 not believe jihad is an integral element of Dawa. It just
8 depends who you are talking about.

9 Q. The full name, Markaz-ud-Dawa-wal-Irshad, irshad means?

10 A. I forget. Jurisprudence? Something like that. It's
11 the -- guidance? Guidance, excuse me.

12 Q. So how many offices, to your knowledge, does it have?

13 A. They have -- well, they had a bunch. I can't for sure
14 say how many of them are still open. But they had offices in
15 places like Karachi, Lahore, Attock, Muridke, Muzaffarabad,
16 Balakot, and they had contacts in offices across Pakistan up
17 until approximately 2002, 2003.

18 At that point when the Pakistani government cracked down
19 on their activities, their footprint shrank. They still had
20 offices, but a lot of them were closed or shuttered and they
21 moved most of their operations into eastern Pakistan.

22 Q. You mentioned earlier on Friday that the Northwest
23 Province and Waziristan, these are dangerous places for even
24 Pakistanis?

25 A. I didn't say that they are dangerous places. I said

1 Wana is a dangerous place.

2 In March of 2005, two Pakistani journalists, local guys
3 from Islamabad, went up to Wana because it was -- again, it
4 was a no man's land, and they wanted to see how dangerous it
5 was and they wanted to see what was going on up there, they
6 wanted to try to interview Taliban people. They weren't
7 coming up there with a hostile intent at all.

8 They went up there, and in their way into Wana they were
9 hit by another car, the car opened up the side, and two
10 people with AK-47s got out and killed them.

11 Shortly thereafter a statement was issued by a group
12 calling itself Sipah-e-Islam -- S-i-p-a-h e Islam --
13 explaining that these two individuals were working on behalf
14 of the Christians and were suspected to be American spies and
15 thus they were executed.

16 Wana is the location of many of the missile strikes, the
17 guided missile strikes that we hear about in the media. In
18 fact, there was just a missile strike there last week that
19 was targeting the head of the Pakistani Taliban.

20 Wana is the capital of the Pakistani Taliban-controlled
21 territory. It's an exceptionally dangerous place to be.
22 There is even a lady who converted to Islam in Canada and who
23 wanted to take a Taliban commander as a husband who went over
24 there several months ago looking to find -- again, a
25 supporter of the Taliban, a big supporter of the Taliban, who

1 was kidnapped and is now being held by the Taliban for ransom
2 and they are threatening to execute her.

3 So I think the answer is that, regardless of whether you
4 are Pakistani, regardless of whether you are Muslim,
5 regardless of whether you are even an Al-Qaeda supporter,
6 this area is exceptionally dangerous to be in.

7 There are people here who are Jihadis, there are people
8 here who are kidnappers, there are people here who are
9 opportunists. There is no absolutely no control whatsoever
10 by the Pakistani government. The only sign of the Pakistani
11 government is that every few years, the Pakistani military
12 launches an invasion where they try to take back this
13 territory, always unsuccessfully.

14 And this is why you see the deals between the Pakistani
15 government and the Taliban. When you see those deals, those
16 deals are all taking place pretty much in Waziristan, in
17 south Waziristan.

18 Q. Now, when we are talking about the Pakistani Taliban,
19 they are related to the actual Afghani Taliban; correct?

20 A. Somewhat, yes.

21 Q. A branch off of it?

22 A. Yes, a branch, yes.

23 Q. Could you go into the history of how the Taliban post
24 the Soviet era, when the Soviets, what do you call it,
25 retreated, the vacuum that took place and how the Taliban

1 arose?

2 A. Sure. Following the end of the Soviet-Afghan War, there
3 was chaos in Afghanistan. The Mujahideen commanders who had
4 fought against the Soviet Union including several who are now
5 Pakistani Taliban commanders, couldn't agree to share power
6 amongst themselves. So they started waging war against
7 themselves, and they destroyed large parts of Afghanistan.

8 In 1995, a group of clerics along the Afghan-Pakistani
9 border, radical clerics of this Deobandi school, decided that
10 the answer to this was that these Mujahideen, these former
11 commanders were no longer Islamic, and the answer was that an
12 even stricter form of Islam needed to be established in
13 Afghanistan. That this Islam was too moderate, it was too
14 weak, it was too flimsy, and that the real Islam needed to be
15 established by force.

16 Led by a native of Kandahar named Mullah Omar, these
17 individuals crossed over the border, mostly with just a
18 madrassa of students, students carrying AK-47s, and crossed
19 over the border and seized control of Kandahar. At that
20 point there really was no central government, so there was no
21 one to fight them.

22 Once they discovered that there was no one to fight
23 them, the Taliban began expanding their control of the
24 territory, they began fighting the remaining war lords, they
25 began executing enemies of Islam, they killed the former

1 president of Afghanistan, they murdered Shiites.

2 The Taliban were a Pashto organization, Pashto meaning
3 that -- in southern Afghanistan, it's controlled by one
4 ethnic group, it's called the Pashtuns. Northern Afghanistan
5 has different ethnic groups. These ethnic groups frequently
6 come into conflict with each other, they kill each other,
7 they get in wars with each other.

8 And the Taliban are a Pashto movement. So a lot of
9 times what you had is as the Taliban began seizing control
10 over other areas of Afghanistan, they would commit atrocities
11 against other ethnic groups, even if they were Muslims, the
12 Tajiks, Usbeks and others.

13 It was an exceptionally bloody conflict. It was a
14 front-line conflict, kind of like World War I. Thousands of
15 people died. It was largely a stalemate up until about
16 October of 2001.

17 Q. Is it not true that as a result of the civil war that
18 took place in the vacuum after the Soviets retreated, that
19 the people wanted the law and order which the Taliban were
20 establishing?

21 A. Well, they wanted law and order. I don't know if they
22 wanted the Taliban.

23 They wanted law and order, sure. But again no Tajik and
24 no Uzbek and no Hazar or Shiite, which comprise a very large
25 section of Afghanistan, is ever going to say or ever would

1 have said we wanted the Taliban here, because the Taliban are
2 Pashto and the Taliban are fundamentally a Pashto-Islamic
3 movement.

4 There is no way that a Tajik or an Uzbek or a Hazar
5 would have said, Please, Taliban, come, please control us.
6 That doesn't happen.

7 Q. A couple of questions. You mentioned that the Tajiks,
8 the Uzbeks form a large -- they are minorities; correct?

9 A. They are individually a minority. But if you take up
10 the Tajiks, the Uzbeks and the Hazara, the Shiites, who all
11 basically form a united front -- that's what the northern
12 alliance is. The northern alliance is these groups that
13 united to fight against the Taliban -- that's about 40,
14 45 percent of Afghanistan.

15 So that is -- they are a minority, sure, but that's a
16 significant minority, yeah.

17 Q. Is it not true that the Taliban had Uzbeks-Muslims
18 fighting along with them?

19 A. They had nonAfghan-Uzbeks, they had Uzbeks from
20 Uzbekistan who were Uzbek-Islamic extremists, yes, that's
21 true. They come from a group that -- I mean, it's a
22 well-known Islamic movement that's a designated foreign
23 terrorist organization.

24 But those people are not Afghan-Uzbeks. They are
25 Uzbek-Uzbeks. They may be of the same ethnicity, but they

1 are a different nationality and they have an entirely
2 different agenda.

3 Also the people that you are talking about, the Islamic
4 Movement of Uzbekistan, the IMU, they are a tiny group. It's
5 a group of maybe a couple hundred people at most.

6 I'm talking about the population of Uzbeks in
7 Afghanistan. I'm talking about thousands, maybe millions of
8 people.

9 Q. But the way you phrased it earlier, it sounded as if you
10 were saying that the basis of the conflict between the
11 Taliban and these other ethnic groups was ethnicity, whereas
12 you were saying that there is actually Uzbek ethnic people
13 who are --

14 A. No, no, it largely was ethnic. When the Taliban took
15 over Mazar-e-Sharif in 1997, they began dragging Shiites and
16 Uzbeks into the streets and boiling them in pots alive. The
17 same thing had been done by Uzbeks and Tajiks to the
18 Taliban. It's not -- it was a tit-for-tat kind of thing.

19 But they weren't picking people on the basis of what
20 side they were on. They were picking people on the basis of
21 their ethnic background. Shiites, Hazar-Shiites have been a
22 routine target of the Taliban in Western Afghanistan.

23 And Shiites in general have been a particular target.
24 When the Taliban took over Mazar-e-Sharif, they went into the
25 Iranian consulate there and they murdered the Iranian Consul.

1 The reason that they murdered the Iranian Consul was because
2 he was a Shiite, not because he was an Uzbek or not because
3 he was a Muslim or nonMuslim, but because he was a Shiite and
4 it was a sectarian thing.

5 The Taliban are -- again it's a very specific ethnic and
6 sectarian -- it's a Deobandi-Pashto movement. There is a
7 handful of Uzbeks and there is a handful of Tajik extremists
8 who fight with them, but the hundreds of thousands and
9 millions of Tajiks and Uzbeks who live in Afghanistan, the
10 sweeping majority of those people have never supported the
11 Taliban, have never had anything to do with the Taliban,
12 never wanted the Taliban to come into their lands, and have
13 suffered terribly under the Taliban.

14 You should speak to some of the Tajiks up in the plains
15 north of Kabul who had their farms destroyed, who had their
16 way of life destroyed by the Taliban and had to flee for
17 their lives. I mean, this is a basic rule of Afghan
18 history.

19 This is not something new, either. I mean, this goes
20 back -- these ethnic and sectarian fissures in Afghanistan go
21 back far longer than the contemporary jihad that's existing
22 there now.

23 Q. Back to Jamat-ud-Dawa, is it true that Jamat-ud-Dawa is
24 officially permitted by the Pakistani government to help the
25 government in relief activities in Pakistani-controlled

1 Kashmir in 2005?

2 A. It was involved. I don't know if it was allowed to be
3 involved. I don't know if anyone ever wrote a thing.

4 Merely what the Pakistani government said is that we
5 can't crack down on them providing humanitarian relief to
6 people.

7 If we see that there is politics involved or if we see
8 that they are trying to use this as a cover for something
9 else, then we will get involved. But as long as it's just
10 providing humanitarian relief, because of the fact that we
11 can't do this on our own and because it would look very bad
12 politically, we can't stop them from doing that.

13 That doesn't mean that they liked it, that they
14 encouraged it. In fact, my understanding is that they
15 actively discouraged it afterwards when they realized that
16 these activities were in fact being used as a cover for
17 recruitment and other activities that had nothing to do with
18 humanitarian aid.

19 Q. And Jamat-ud-Dawa is the same as Lashkar-e-Tayyiba you
20 are saying?

21 A. Yes. When Lashkar-e-Tayyiba was banned in 2002,
22 I explained that they changed their name. So they changed
23 their name from Markaz-ud-Dawa and Lashkar-e-Tayyiba simply
24 to Jamat-ud-Dawa.

25 Now, what's the difference? Jamat-ud-Dawa means the

1 Dawa organization. Markaz-ud-Dawa means the Dawa
2 center. It's pretty much the same thing. It's just a very
3 small change of the name.

4 Q. Now, Abu Zubaydah was captured from an LeT safe house?

5 A. That's correct, he was.

6 Q. And Abu Zubaydah is --

7 A. Abu Zubaydah al-Filastini was a former training camp
8 manager in Afghanistan. He ran a series of guest houses
9 along the Afghan-Pakistani border which channeled primarily
10 North Africans into terrorist training camps in Afghanistan
11 prior to October of 2001.

12 Q. So his arrest was made possible because the U.S.
13 depended on Pakistanis' help and the Pakistanis depended on
14 LeT's help and they made that --

15 A. Oh, no, no, no, no, no. That arrest had absolutely
16 nothing to do with help from Lashkar-e-Tayyiba, period. That
17 was not given by assistance by Lashkar-e-Tayyiba. That's
18 entirely incorrect. I don't think Lashkar-e-Tayyiba played
19 any helpful role whatsoever in terms of that arrest, not as
20 far as I know.

21 Q. Is it true that Al-Qaeda has accused the head of LeT,
22 Hafiz Saeed Mohammed, of conspiring against the jihadi
23 networks?

24 A. No, not in any official statement, no. Maybe behind the
25 scenes, but not in any official statement. And as far as

1 Lashkar-e-Tayyiba is concerned, Lashkar-e-Tayyiba has
2 publicly and openly endorsed the Taliban, has openly called
3 for people to fight against the United States in Afghanistan,
4 has openly called for the establishment of an Islamic state
5 in Pakistan.

6 Again, I mean, Hafiz Mohammed Saeed, the person you just
7 described, specifically said that as far as Musharraf, the
8 wrath of God would be on him for abandoning the cause of
9 jihad.

10 Q. And is he still --

11 A. He was just under house arrest. I mean, he was just
12 freed.

13 Q. He was just --

14 A. He was under house arrest. He was imprisoned by the
15 Pakistanis. He was just freed now.

16 Q. So as of right now he's a free man?

17 A. Just in the last few days, yes. He was under house
18 arrest for months.

19 Q. It happened on and off?

20 A. It's difficult for the Pakistanis politically to hold
21 them unless they have something that they can charge him
22 with. This is the first time I know that he's ever been
23 arrested, but it's because of the fact that the Pakistanis
24 I think are starting to lose patience with these people.

25 Q. The head of LeT is today a free man?

1 A. He's under surveillance. I believe he has travel
2 restrictions, but he is -- he may still be confined to his
3 home, but he's -- he's free. I believe the Indian government
4 is currently seeking his extradition.

5 Q. LeT was banned in 2003 in Pakistan?

6 A. I believe 2002 actually.

7 Q. And it stopped functioning at that time under that name?

8 A. In approximately 2002, yes, it began -- it stopped
9 operating as Markaz ud-Dawa and began operating as
10 Jumat ud-Dawa, and it stopped using the name
11 Lashkar-e-Tayyiba and just called itself Jumat ud-Dawa.

12 Q. So in 2005 one could not actually go see an LeT
13 recruiter?

14 A. Yeah, you could. Again, this was just for show. If you
15 showed up at a Jumat ud-Dawa office, Abdullah Muntazir, who
16 is the spokesmen for Lashkar-e-Tayyiba, is also the spokesman
17 for Jumat ud-Dawa. It's the same thing. If you go speak
18 with Abdullah Muntazir or a recruiter for Jumat ud-Dawa, you
19 are speaking with a recruiter from Lashkar-e-Tayyiba. They
20 just changed the name, that's it.

21 Q. But technically in 2005 LeT did not exist?

22 A. No, it existed. It just changed its name. I mean,
23 again, if you look at the designation, for instance, the U.S.
24 government has designated both Lashkar-e-Tayyiba,
25 Markaz ud-Dawa and Jumat ud-Dawa.

1 If you look at the designation for Jumat ud-Dawa, the
2 designation as a foreign terrorist organization, it
3 specifically states, I mean, Jumat ud-Dawa is
4 Lashkar-e-Tayyiba. This is just an alias and that it's still
5 conducting operations.

6 In fact, if you go there, I mean, they still call
7 themselves Lashkar-e-Tayyiba among themselves. They just
8 don't advertise that openly anymore because they realize
9 there are legal implications to that.

10 Q. You are saying Jumat ud-Dawa is one of the listed
11 organizations designated as a foreign --

12 A. Yes, I think as of '03 or '04, it's specifically
13 designated, Jumat ud-Dawa. Again, that's in the
14 *Federal Register*. You don't have to take my word for it.

15 Q. You are saying Jumat ud-Dawa -- when was it that
16 Jumat ud-Dawa was designed as a foreign terrorist
17 organization?

18 A. I couldn't tell you exactly, but it was either in 2004
19 or 2005. It's in the *Federal Register*. You can look it
20 up. Jumat ud-Dawa is specifically designated as
21 Jumat ud-Dawa as an alias for Lashkar-e-Tayyiba. It's listed
22 as such by the U.S. Treasury Department, it's listed as such
23 by U.S. State Department, and it's in the *Federal Register*,
24 not to mention the fact that the website of Jumat ud-Dawa is
25 identical, the same as the website of Lashkar-e-Tayyiba.

1 They just changed one word at the top. It's the same
2 thing. I have copies of both websites. You can see, it's
3 the same material.

4 I should add as well that Jumat ud-Dawa put out open
5 statements soliciting donations for jihad and Mujahideen
6 under Jumat ud-Dawa in English.

7 Q. Do you know the dates? Because the date I have is
8 Jumat ud-Dawa is not designated by the United States until
9 April 27 of '06?

10 A. I couldn't give you the exact date, but it's been
11 designated. I believe it's before that, though. I mean,
12 I don't have the designation in front of me, but it's been
13 designated.

14 Q. But the point is that prior to April 27 of 2006, it was
15 not designated?

16 A. I couldn't respond to that because I don't have the
17 *Federal Register* in front of me.

18 But I caution you in that, because I think it was
19 designated as something before that, I don't know where it
20 was published, but I think as early as 2005. But don't quote
21 me on that because again I don't have the *Federal Register* in
22 front of me.

23 Q. Now, back to the Northern Western -- the area, the
24 Taliban-controlled area. Is that an area where nonArabs --
25 I mean, excuse me, nonPakistanis such as Arabs and other

1 nationalities such as Uzbeks have been; correct?

2 A. There are a small group of them, yeah, yeah.

3 Q. So. And is it --

4 A. But they are discrete and they are separated away. They
5 don't mix in so much with anyone who is not a local Pakistani
6 Taliban member.

7 Q. Now, if a Pakistani who is familiar with Pakistan,
8 speaks the language, culture, knows -- religious, everything,
9 wanted to go to this Taliban-controlled area and join the
10 jihad, would it be a problem for him to join the jihad?

11 A. Would it be a problem?

12 Q. I mean, would he --

13 A. It would be exceptionally dangerous, it would be
14 exceptionally risky. If you don't believe me, ask
15 Jude Kenan Mohammed, the young man who was arrested in
16 Peshawar just a few months back, the American national but of
17 Pakistani origin.

18 The fact is that a lot of people have said, oh, it's not
19 a big deal, and they have gone up there and they have been
20 killed or they have been kidnapped or they have been
21 assaulted.

22 I mean, again, you have got two Pakistani journalists
23 from major publications who did not consider themselves to be
24 agents of the Americans, these were independent people
25 looking to give the Pakistani Taliban a voice, and they were

1 gunned down as being spies for the United States.

2 Someone who comes into that region is automatically
3 going to be looked on very suspiciously, Why are you coming
4 here?

5 It's true, if you go to that region and you get in touch
6 with the right people and you know the right people and you
7 get in contact with them ahead of time, sure, you can get
8 hooked up with the Pakistani Taliban or a jihadi group.

9 But if you simply show up in that region without making
10 arrangements ahead of time or without knowing somebody there,
11 you are putting yourself at an exceptionally dangerous
12 situation, probably one of the most dangerous situations on
13 earth.

14 Because you not only have to worry -- you have to worry
15 about so many different things. You have got to worry about
16 thieves, you have got to worry about missile strikes, you
17 have got to worry about the Pakistani Taliban, you have to
18 worry about dissident Taliban members, you have to worry
19 about local opportunists, I mean, you have got to worry about
20 the Pakistani government. I mean, nobody is your friend,
21 nobody.

22 Q. Now, the Pakistani Taliban have their hold of influence
23 though; right?

24 A. That is the center of their hold of influence, Wana and
25 South Waziristan.

1 Q. So whatever law and order is there, it's placed by them,
2 the Shar'ee Allah; right?

3 A. I would argue there isn't much law and order there right
4 now. The Shar'ee Allah that's being enforced is not really
5 being enforced. It's being enforced in individual small
6 areas.

7 But this is a no-man's-land. The Pakistani Taliban,
8 it's not one organization that's very discrete with a very
9 highly, you know, organized infrastructure. These are
10 individual commanders looking to make a name for themselves.

11 There was just a report yesterday that two of the top
12 Pakistani military commanders may have killed each other in a
13 dispute over leadership.

14 So the idea that you would be safe just going in there
15 because of the fact that you are a Pakistani Taliban member
16 or you are allied with them or you speak their language or
17 you look like that, that's nonsense. I mean, they are
18 killing each other.

19 Q. So let's come back. Now, if someone, a jihadi --

20 THE COURT: Excuse me, how much longer do you
21 have? We are going on two hours now.

22 MR. SADEQUEE: I think the last five minutes.

23 THE COURT: All right.

24 BY MR. SADEQUEE:

25 Q. If a jihadi wants to or someone who aspires or intends

1 to become -- join the jihad, is it not true that even if he
2 fails to join and if he's intent on becoming a martyr and
3 gets killed on the way, he would still be considered a
4 martyr?

5 A. That's entirely dependent on what cleric you follow,
6 that's entirely dependent upon -- I mean, that's a subjective
7 call on the part of a cleric and on the part of an
8 individual, and it's not accepted among a lot of people.

9 There are a lot of people who, even if religiously they
10 might become a martyr if they are martyred going to the
11 field, that's not the way that they want to go out. They
12 haven't spent all this time and all this money and all this
13 effort preparing for jihad to get taken out along the way.

14 I mean, these people are not interested in suicide
15 missions. They are interested in achieving
16 something. I mean, this is not just -- the act is not just
17 killing myself for the sake of killing myself. It's trying
18 to achieve something by killing myself.

19 You don't achieve anything by being arrested or by
20 being -- or by being taken out en route. You only achieve
21 something by meeting these people and getting assigned a
22 mission.

23 So I am sure that there are some people who have the
24 mindset that, well, if I get killed along the way, at least I
25 will still be a martyr, but I don't think that's their number

1 one priority.

2 Q. We talked about Yusuf al-Uyayree. Are you familiar with
3 one of his articles called "The Path to the Land of Battar"?

4 A. I am indeed.

5 Q. Does it not say in that article that what matters is the
6 intention and trying to go, and if you get killed, you would
7 be awarded for your intention?

8 A. Yeah. Again, this is the whole thing, this is supposed
9 to reassure people that despite the hardships and despite the
10 dangers, you should still go. And don't worry, if your
11 intention is correct, you will still be a martyr.

12 But there is a difference between that, well, if it
13 happens, you know, so be it, versus this is what I want to
14 happen.

15 I would say that, just logically speaking, the vast
16 majority of people who end up in that direction, they are
17 looking to join something, they are looking to do something,
18 they are looking to carry out something. Simply being
19 murdered and becoming a martyr for Islam unknowingly I don't
20 think is the top of their agenda.

21 I mean, you don't spend that amount of time and effort
22 and put yourself at that kind of risk just to end up in
23 prison or to be killed. I mean, these guys are looking to
24 achieve something. If they want to die, they want to die on
25 their own terms.

1 Sure, the idea is is that you are not going to get
2 cheated if you get, you know, intercepted along the way, you
3 are not going to get cheated out of martyrdom. But that's
4 just religious assurances. That doesn't have anything to do
5 with the tactical mission of what they are trying to do.

6 Q. Now, Afghanistan is a jihadi zone, correct, or a war --

7 A. Some of it is.

8 Q. And Kashmir is to the right of Pakistan. So to the west
9 of Pakistan there is Afghanistan and to the east of Pakistan
10 there is Kashmir; right? That's another jihadi zone.

11 Now, within Pakistan, there is Waziristan and also
12 these other territories that's also a conflict jihad zone;
13 correct?

14 A. Well, again, it depends. Are you saying it is a
15 legitimate jihad zone --

16 Q. No.

17 A. -- or are you saying there is a jihad going on there?

18 Q. Yes.

19 A. There is a jihad going on there, yes.

20 Q. And then there is multiple jihad organizations all over
21 the place; correct?

22 A. You mean in Waziristan or --

23 Q. I mean, in that whole region, Afghanistan, Pakistan --

24 A. Yes, there is a wide panoply of different jihadi
25 organizations and Mujahideen organizations fighting in this

1 region, yes.

2 Q. So if someone wanted to, was determined to join the
3 jihad or a training camp, with all these variety of avenues
4 and options and organizations, would that -- would it not be
5 quite easy to get --

6 A. No. Pakistan is a police state. Pakistan is a police
7 state. If you come in there -- here, look, if you are from
8 Muridke or if you are from Muzaffarabad and you live in the
9 city, so you have constant contact with Lashkar-e-Tayyiba or
10 Jaish-e-Mohammed or something like that, yeah, you can join
11 an organization like that pretty easily.

12 But if you don't live in Muzaffarabad or you don't live
13 in Balakot or you don't live in Muridke and you are not
14 from -- Lashkar-e-Tayyiba is the Ali Hadith sect, it's a
15 very, very small Sunni sect; okay? Most Sunni Muslims are
16 not from that sect; okay?

17 So normally speaking, other than foreigners, the only
18 people in Pakistan who they court are people of the
19 Ali Hadith sect; right?

20 Again, if you are -- these are small militant
21 organizations. For the most part, they are
22 proscribed. Jaish-e-Mohammed, illegal, and very much illegal
23 in Pakistan. Trying to join these organizations as an
24 outsider or someone who is not intimately familiar, whose
25 family is not part of this, who isn't part of the mosque

1 where these people are recruiting, they know that there are
2 spies coming.

3 If you went there before 2001, then it was fairly
4 open. If you went there '99, 2000 -- I interviewed people,
5 Americans who went there -- it was fairly open back then.

6 But everything changed when the U.S. invaded
7 Afghanistan. The whole -- the dynamics of the region
8 changed. The Pakistani government began looking for people
9 who were coming and trying to join these organizations. And
10 so did the United States government.

11 So the idea that these organizations simply are willing
12 to accept anyone who comes in is ridiculous. I mean, they
13 have to exercise some degree of operational security, because
14 otherwise they are going to get loaded down with American and
15 Pakistani spies, among others.

16 They need to make sure that the people that are coming
17 in they judge to be jihadis worth their time, people worth
18 their effort, and they also have to be at a level where, you
19 know, if the U.S. government is looking to investigate
20 Lashkar-e-Tayyiba bank accounts or camps or something like
21 that, they can't simply press a button and have the full
22 dossier on hand.

23 They are underground organizations. At least after 9/11
24 they have been underground organizations. Jaish-e-Mohammed
25 changed their name. Lashkar-e-Tayyiba changed their

1 name. They shut down many of their offices. They changed
2 their phone numbers.

3 Q. You mentioned they are underground, but at the same time
4 you mentioned that the very head of LeT is free?

5 A. He's free, but do you know where he is right now? Do
6 you have a street address? Neither do I.

7 If I wanted to find Hafiz Mohammed Saeed in Pakistan
8 right now, I couldn't tell you where he is. I couldn't
9 tell you what street he's on, what city he's in. Trying to
10 find someone like that is trying to find a needle in a
11 haystack.

12 If you know where you are going or if you have a contact
13 that's there that's already made contact with them, sure, you
14 can join them, no problem.

15 But if you simply show up at their doorstep with your
16 bag in one hand and a ticket in the other, you have to
17 understand that these people don't know whether or not that
18 person is a spy, whether or not they are legitimate, whether
19 or not they are a crazy person. They don't know.

20 And they have to be very careful. Because if they take
21 in spies into their organization now, they are in deep
22 trouble.

23 Q. You mentioned do I know or does anyone know where
24 Hafiz Saeed Mohammed, the leader of LeT is. Well, clearly
25 he's -- as you mentioned, he was in custody of the Pakistani

1 government.

2 A. That's right, he was.

3 Q. As of just very recently?

4 A. That's correct, he was, yes.

5 Q. So it's not that he's hiding? I mean, it's more or
6 less still he can be accessed; correct?

7 A. Yeah, but there is a difference -- again, there is a
8 difference between seeing Hafiz Mohammad Saeed and joining
9 Lashkar-e-Tayyiba.

10 You know, look, Jaish-e-Mohammed is a great example. I
11 had a colleague of mine, a reporter from up in Canada who
12 back in 2005 had heard all about this particular camp in
13 Balakot run by Jaish-e-Mohammed.

14 So he got together some Pakistanis and they went up to
15 Balakot, and they tried getting near the camp. Because they
16 wanted to see if they could get footage of the camp, see the
17 camp, meet anyone who was at the camp.

18 They couldn't get anywhere near it; okay? There were
19 armed guards watching, making sure no one came anywhere
20 near. You couldn't get close, whether you were Pakistani or
21 local, unless you already made contact with them.

22 If you already made contact with them and you set up a
23 relationship, no problem. But if you simply show up at the
24 doorstep of a training camp, you have to understand, these
25 people have a natural degree of skepticism. They have to for

1 their own survival.

2 Q. Now, I think that you are making a distinction. I'm
3 asking if someone wanted to go to -- perhaps they might not
4 be accepted by this organization, Jaish-e-Mohammed or LeT,
5 the organization might not accept them or take them in, but
6 if someone wanted to visit an office or a camp of these
7 organizations --

8 A. Well, again --

9 Q. -- they could do that?

10 A. Again, many of the offices have been closed down since
11 2001, and you can't get anywhere near the camps.

12 I was able to have a local Pakistani, a colleague of
13 mine, go and videotape inside of Lashkar-e-Tayyiba's camp in
14 Muridke; all right? The only way I was able to do that was
15 by first contacting Abdullah Muntazir, the official spokesman
16 of Lashkar-e-Tayyiba, interviewing him, speaking with him at
17 length, explaining to him what my intentions were, then we
18 were given invitation to send someone to Muridke.

19 There is a giant barbed-wire fence all the way around
20 the compound, and it's way out. I mean, it's a huge, very
21 thick barbed-wire fence. Nobody is getting anywhere near
22 that compound unless Lashkar wants them to get near it or
23 allows them to get near it.

24 My understanding was that then opening the gates on this
25 occasion when we went in was one of the very few occasions

1 they have let in outsiders to see the camp, and even then it
2 was a very highly chaperoned visit. They would only let us
3 film certain things. It was very scripted.

4 You know, they are not that open. I mean, they were
5 open, but events after 2001 have forced them to kind of seep
6 further and further underground.

7 Q. Now, you are talking about a media team or --

8 A. These are people that work for me.

9 Q. Okay. But I'm speaking of if a Muslim, a devout Muslim,
10 a jihad-oriented Muslim wanted to go to these camps, would
11 they --

12 A. There is no way for them to know that you are a
13 jihad-oriented Muslim until they talk to you. You have to
14 first -- you have to speak -- they can't just look at you and
15 say, Well, you are a jihadi-oriented Muslim. They have to
16 speak with you.

17 And in order to speak with you, they have to see you in
18 person or they have to speak to you on the telephone. So,
19 again, if you call them or you write them ahead of time and
20 you work this out and you make the arrangements and they
21 accept you, sure.

22 But if you simply show up at their gate, regardless of
23 whether you are carrying a camera, an AK-47, or a bag of
24 balloons, they are not going to let you in unless they know
25 who you are. It's just a simple rule of operational

1 security. They are not stupid.

2 Q. But the question which I think I'm trying to get at is
3 this. If someone wanted to visit -- it's one thing --
4 you are speaking of to be entered into, to actually be
5 accepted.

6 A. No, I'm speaking, again, visiting. I'm saying that if
7 you simply show up, you are not going to be allowed to visit,
8 you are not going to be allowed to come in, you are not going
9 to be allowed to do anything until they know who you are,
10 period, period.

11 Q. And how would they find out who you are?

12 A. If you contact them ahead of time, or if you come from a
13 network of individuals who they know somehow, either they
14 know your cleric or they know the organization you are a part
15 of or they have assurances from someone that you are familiar
16 with, your friend, your associate or whoever.

17 But they have to have some kind of prearranged knowledge
18 of who you are. Because again, they don't know who you
19 are. You could be a spy, you could be a journalist, you
20 could be anyone. And they don't judge people by simply
21 looking at them.

22 Q. But isn't it true that in the videos, in the jihad
23 videos that are released by Al-Qaeda and all these other
24 organizations, they openly actually invite Muslims come join
25 us, come to us?

1 A. Right, but Lashkar-e-Tayyiba has never done that.

2 Q. Well, other organizations have, such as Al-Qaeda, such
3 as --

4 A. Lashkar-e-Tayyiba has never done that.

5 Lashkar-e-Tayyiba has never issued -- Lashkar-e-Tayyiba in
6 general doesn't issue videos.

7 But they have never issued -- they certainly have never
8 issued a video which encouraged people to come there. What
9 they said is if you want to contact us, here is our phone
10 number, here is our e-mail address, call first.

11 Q. So -- okay, you are saying that if someone wants
12 to contact -- wanted to join, they have a public: This is
13 how you can join us?

14 A. Yes, there is a public way, but it's not explicit as,
15 you know, filling in your name and putting in your
16 information. The idea is is that if you want to know more
17 about us or you have something you want to ask us, contact us
18 first, you know.

19 But, sure, again, they were accepting recruits in 2005,
20 foreign recruits in 2004 and 2005, but you had to come
21 through the right way.

22 Q. So --

23 A. And you had to come through a way where they felt you
24 were genuine and legitimate and that you weren't going to
25 cause them lots of problems.

1 But, again, this is just the way it works.

2 Q. So if someone wanted to join LeT, it's not a mystery.
3 LeT is saying this is our phone number, this is our address,
4 contact us?

5 A. The phone number is out there. The e-mail address is
6 out there. If you want to contact them, you can contact
7 them, yeah, sure.

8 MR. SADEQUEE: Thank you. Nothing further.

9 THE COURT: We have been going almost two hours
10 now. I'm going to take a break for the jury.

11 How long is your redirect?

12 MS. COLLINS: I just have two or three questions.
13 It will be very short, Your Honor.

14 THE COURT: Well, I have heard that before.

15 Let's take our midmorning break. We will break
16 until about quarter after. Please don't discuss the case.
17 The evidence is still coming in. We will be in recess for
18 fifteen minutes.

19 (In open court without a jury present:)

20 THE COURT: Is there anything we need to discuss
21 before we break?

22 MR. McBURNEY: No, sir.

23 THE COURT: All right. We will be in recess.

24 (A recess is taken at 11:00 a.m.)

25 -- -- --

1 (In open court without a jury present at
2 11:17 a.m.:)

3 THE COURT: Just to remind those in the courtroom,
4 if somebody does have an electronic device on, all electronic
5 devices have to be turned off. Please do so, because they
6 are already interfering with the PA system.

7 All right. Anything we need to discuss before we
8 bring the jurors back in?

9 MS. COLLINS: Not from the government, Your Honor.

10 THE COURT: Mr. Sadequee, anything else before the
11 jurors come back in?

12 MR. SADEQUEE: No.

13 THE COURT: All right. Bring the jurors in,
14 please.

15 MR. SADEQUEE: I would like to --

16 THE COURT: The jurors are coming back in. We can
17 take that up at the next break.

18 Well, tell them to hold up the jurors so I could
19 take up Mr. Sadequee's latest question.

20 Yes, Mr. Sadequee, what do you have? I'm going to
21 hold the jurors up even though you've stated you were ready.

22 MR. SADEQUEE: I was going -- I wanted to tender a
23 document into evidence as an exhibit, Exhibit 5.

24 THE COURT: Is there any objection?

25 MS. COLLINS: No, sir.

1 THE COURT: It's admitted.

2 All right. They can come in now, please.

3 (In open court with a jury present:)

4 THE COURT: All right. Go ahead.

5 MS. COLLINS: Thank you, Your Honor.

6 -- -- --

7 REDIRECT EXAMINATION

8 BY MS. COLLINS:

9 Q. Mr. Kohlmann, you testified on cross that before LeT
10 would accept any new recruit into their camp or into their
11 organization, that they would want to vet that person first
12 to determine whether they were legitimate. Did I interpret
13 your testimony correctly?

14 A. That's correct. Particularly after 2001 and the
15 crackdown on jihadi organizations inside of Pakistan, yes.

16 Q. And that's true in mid2005?

17 A. It's definitely true in mid2005, yes.

18 Q. So would -- for that prospective recruit, would knowing
19 someone who has a connection to the organization or can some
20 way facilitate with that organization, would that help them
21 in getting through that vetting process?

22 A. Not only help them, that's exactly what
23 Lashkar-e-Tayyiba wanted to do.

24 They were actively looking for people in the
25 United States, the United Kingdom and elsewhere who could

1 serve as intermediaries and could help vet people on the
2 ground before they ever left North America or Europe and got
3 to Pakistan.

4 So that by the time they got to Pakistan, it was a group
5 of people who already were vetted, who were already ready to
6 go, who could be trusted.

7 There were Americans that were recruited for this task,
8 there were others. But the point is is that Lashkar was
9 trying to export the vetting process beyond Pakistan back to
10 the countries of origin.

11 Q. Now, based on your research, was Aabid Khan trying to be
12 one of those facilitators or connectors?

13 A. Yes, Aabid Khan was trying to serve as a connector for
14 both Lashkar-e-Tayyiba and Jaish-e-Mohammed.

15 In fact, what it appeared that he was doing was that he
16 was using these two organizations and competing them against
17 each other, trying to get one to give him a better deal over
18 the other one, kind of like buying a used car.

19 That's basically what he was doing was setting these two
20 organizations against each other to get the best deal
21 possible so that ultimately his people who he could bring
22 over there wouldn't have to bring money, they wouldn't have
23 to bring weapons, they wouldn't have to bring anything. They
24 would just show up and everything would be taken care of for
25 them.

1 MS. COLLINS: No further questions, Your Honor.

2 THE COURT: All right. Does anybody want
3 Mr. Kohlmann subject to recall?

4 MS. COLLINS: Not from the government.

5 THE COURT: Does the defense?

6 MR. SADEQUEE: No.

7 THE COURT: All right. Mr. Kohlmann, we appreciate
8 your testimony. You are being released, but you should not
9 discuss your testimony with anybody until you hear the case
10 has been concluded.

11 THE WITNESS: Thank you very much, Your Honor.

12 THE COURT: Call your next witness, please.

13 MR. McBURNEY: The government recalls
14 Agent Mark Richards.

15 THE COURT: You may be seated. We have sworn you,
16 haven't we?

17 THE WITNESS: Yes, sir.

18 THE COURT: Just to remind you, you are still under
19 oath.

20 THE WITNESS: Yes, sir

21 -- -- --

22 MARK RICHARDS

23 being first duly sworn by the Courtroom Deputy, testifies and
24 says as follows:

25 -- -- --

1 DIRECT EXAMINATION

2 BY MR. MCBURNEY:

3 Q. Good morning, Agent Richards.

4 A. Good morning.

5 Q. I want to talk a little bit about the point in time when
6 the FBI here in Atlanta decided to approach Syed Haris Ahmed
7 to see if he would speak with the FBI about matters of
8 interest to the FBI.

9 Do you remember what month and year that occurred?

10 A. March of 2006.

11 Q. What was the FBI's -- were you involved in those
12 interviews?

13 A. Yes, I was.

14 Q. Were you involved in planning the interviews?

15 A. Yes, I was.

16 Q. Did you participate in four of the five?

17 A. Yes, I did.

18 Q. What was the FBI's intent, its goal in approaching
19 Syed Haris Ahmed? What was it hoping find out?

20 A. We wanted to learn more about Mr. Ahmed's and
21 Defendant Sadequee's trip to Washington, D.C., to Canada. We
22 wanted to learn about Mr. Ahmed's trip to Pakistan. And we
23 wanted to learn more about what Mr. Sadequee -- where he was
24 and what he was up to at that point in time.

25 Q. At that point, meaning in March of '06?

1 A. Correct.

2 Q. The very first interview -- and we heard a little bit
3 from Mr. Ahmed himself -- was where?

4 A. The first interview was at his residence on Ethel Street
5 in downtown Atlanta near Georgia Tech.

6 Q. Did you participate in that one?

7 A. Yes, I did.

8 Q. How many more interviews were there after the first?

9 A. There were four more.

10 Q. Were they back to back to back, no break for Mr. Ahmed?

11 A. No. There was between one and two days' break sometimes.

12 Q. Were these interviews noncustodial, meaning was
13 Mr. Ahmed free to cut the interview off at any time?

14 A. Yes, they were noncustodial, and he was told that they
15 were noncustodial.

16 Q. Did you just use that term, or did you explain to him
17 what that meant?

18 A. I told him he was free to leave during any time.

19 Q. Now, the first interview, it was at his house. Was he
20 free to tell you to go away?

21 A. Yes.

22 Q. Were you ever told to go away at any of the interviews?

23 A. No.

24 Q. Was Mr. Ahmed free to bring a lawyer with him if he had
25 wanted to have counsel present for any of these interviews?

1 A. He was free to do so, yes.

2 Q. Was he free to consult with anyone with the possible
3 exception of one person in between these various interviews?

4 A. Yes.

5 Q. Did you tell him up front, in the first interview, Look,
6 we have five interviews planned and these are the days, or
7 was it more of an organic process, that's how it ebbed and
8 flowed?

9 A. That's just the way it worked out. We obtained some
10 information from him, and once we -- we needed to go back and
11 dissect and digest it a little bit, then we decided we needed
12 to talk to him again a day or two later.

13 Q. During the four interviews in which you participated,
14 how many hours does that encompass, roughly?

15 A. During the ones that I participated in, approximately
16 ten or eleven hours.

17 Q. During those ten or eleven hours, can you count for the
18 jurors the number of times when you were in the room that
19 someone went to the point of raising his voice, pounding his
20 fist, standing up and storming out of the room?

21 A. Yes.

22 Q. How many times?

23 A. Once.

24 Q. Tell the jurors not so much what Syed Haris Ahmed was
25 saying, but what was going on at that time?

1 A. The time that you are referring to, I believe, was on
2 Wednesday, March 15th, when we were asking a question and we
3 were not getting any kind of accurate or truthful answer.

4 Q. March 15th was the second or the third interview?

5 A. That was the third interview.

6 Q. So there is some line of questioning you are pursuing,
7 you are not getting what you believe to be accurate or
8 truthful -- what happened?

9 A. I raised my voice, I told him that he is the one that
10 wrote the word or phrase, a code word or code phrase that we
11 were asking him about, and I told him that I had to go speak
12 to my boss, and I raised my voice. And I left the room, and
13 I went and called my boss.

14 Q. During the ten-plus hours of interviews in which you
15 participated, did you ever observe any of the other agents
16 who participated doing what you did?

17 A. Not to that degree.

18 Q. What do you mean by that? Did anyone else stand up and
19 yell and storm out of the room?

20 A. Not that loudly, and they didn't necessarily stand up
21 that I can remember.

22 I believe there were times when we raised our voice a
23 little bit here and there just because we were not receiving
24 truthful answers to some of the questions we knew.

25 Q. The setup of these interviews, and in particular the

1 last three which I think we heard were at the FBI, was this
2 in a room where the defendant was in the corner and there was
3 a bright light shining on him and, even though you told him
4 he could go, he would have to get past guards standing at a
5 door?

6 A. No. The interviews at the FBI were conducted in a
7 supervisor's office that was empty at the time.

8 Q. At some point during one of the interviews, did you
9 learn that the video camera, the camera that was used to make
10 the videos, was still in Syed Haris Ahmed's or his family's
11 possession?

12 A. Yes.

13 Q. Which interview, one, two, three, four, or five?

14 A. It was the third interview, number three, that was
15 conducted on March 15th.

16 Q. Is that not something you would have asked about in the
17 very first interview?

18 A. Yes, it was.

19 Q. When was it finally revealed to you?

20 A. It was finally revealed to us that it was his camera
21 that was used to take the videos in Washington, D.C., during
22 the March 15th interview, approximately seven hours into the
23 total culmination of the duration of the interviews.

24 Q. When you learned that the camera might still exist
25 at Syed Haris Ahmed's family home, did you stop the

1 interview?

2 A. We were wrapping up that third interview as it was.

3 Q. Did anyone go to collect the camera?

4 A. Yes. I did not, but there were two or three agents that
5 asked if we could have the camera. And they traveled with
6 Mr. Ahmed up to his family residence, and he provided them
7 with the camera.

8 Q. It's in front of you. You should have in front of you a
9 bag that is -- if the bag isn't labeled, what's in it is --
10 as Exhibit 31. Do you recognize that?

11 A. Yes, I do.

12 Q. What is it?

13 A. It's the camera that he provided to the agents that day
14 that we placed it into evidence.

15 Q. Okay.

16 MR. MCBURNEY: I think that's already been
17 admitted. If it hasn't been admitted, we tender Government's
18 Exhibit 31?

19 THE COURT: Any objection?

20 MR. SADEQUEE: No objection.

21 THE COURT: It's admitted.

22 BY MR. MCBURNEY:

23 Q. Was that camera submitted to the FBI lab in Quantico to
24 determine if it could be connected in any way to the videos
25 of Washington, D.C., that were found on Younis Tsouli's

1 computer, Aabid Hussein Khan's computer, and Syed Haris
2 Ahmed's family computer?

3 A. Yes, it was.

4 Q. Was there a linkage demonstrated?

5 A. The linkage was that the videos that were taken were
6 taken with the same type of camera.

7 Q. We were just talking about how the defendant was free to
8 consult with an attorney -- that Syed Haris Ahmed was free to
9 consult with an attorney or talk with family or whomever in
10 between these interviews.

11 Was there one person that you asked Syed Haris Ahmed not
12 to communicate with or at least discuss the fact that you
13 were interviewing him?

14 A. Yes, there was one individual.

15 Q. Who was that?

16 A. Defendant Sadequee.

17 Q. Did you just mention that sort of off-the-cuff at the
18 end of the first interview, or was this something that you
19 repeated?

20 A. I repeated it during all -- I believe all of the
21 interviews. And it wasn't just a request. It was a strong
22 encouragement not to speak with Mr. -- or Defendant Sadequee.

23 Q. During the interviews, did you ask Syed Haris Ahmed how
24 he communicated when he did with the defendant?

25 A. Yes, I did.

1 Q. Did he provide you with a number of e-mail addresses
2 that at one point or another in time he had used to
3 communicate with the defendant?

4 A. Yes, he did.

5 Q. Can you put up Exhibit 260? This is just a
6 demonstrative aid.

7 At any point during the 13, 14, 15 hours of interviews,
8 however many hours it was, did Syed Haris Ahmed give you the
9 address that's on the screen here as Exhibit 260,
10 Dannymoore1126@yahoo.fr?

11 A. No, he did not.

12 Q. The .fr stands for what, if you know?

13 A. It's an e-mail address that is out of France.

14 Q. I think the next witness will cover this, but did the
15 FBI at some point after the interviews were over come to
16 learn that Syed Haris Ahmed used the e-mail address on the
17 screen, Government's Exhibit 260, to communicate with the
18 defendant?

19 A. Yes.

20 Q. After the final interview, August -- well, what was the
21 date of the last interview? Probably not August. March?

22 A. March 18, 2006.

23 Q. Did the FBI learn if Syed Haris Ahmed traveled to the
24 defendant's family home, the residence on Nowata Drive?

25 A. Yes, he traveled there to 4204 Nowata Drive, it's the

1 family residence of the Sadequee family, on March 19th, which
2 was the next day.

3 Q. Was that something out of the ordinary for Syed Haris
4 Ahmed to do?

5 A. Yes, it was.

6 Q. Had he been to that house in the past three, four or
7 five months?

8 A. No.

9 Q. What was he observed doing at the house?

10 A. He was observed at the house --

11 Q. He, meaning Syed Haris Ahmed at the Nowata Drive
12 residence?

13 A. Correct, I'm sorry. Mr. Ahmed was observed at the
14 Nowata Drive residence leaving the residence with
15 Amimul Sadequee, which is the brother of the defendant.

16 They departed the residence, and they got into
17 Mr. Ahmed's car and drove to a Shell Gas station/convenience
18 store close-by.

19 Q. Did they get gas?

20 A. I don't recall if they got gas, but they stepped into
21 the convenience store.

22 Q. And then Mr. Ahmed returned the defendant's brother to
23 the Nowata Drive address?

24 A. Right. They departed the convenience store a few
25 minutes later and returned, Mr. Ahmed returned

1 Amimul Sadequee back to the home address on Nowata Drive.

2 MR. McBURNEY: All right. Thank you,
3 Agent Richards.

4 THE COURT: Any cross?

5 -- -- --

6 CROSS-EXAMINATION

7 BY MR. SADEQUEE:

8 Q. Good morning.

9 A. Good morning.

10 Q. During the course of the interviews, did Haris say a
11 number of times that his heart was pounding?

12 A. I remember he said that one time, yes.

13 Q. Was he told a number of times that, Do you want to spend
14 the rest of your life in a six-by-six cell, or something to
15 that effect?

16 A. I know I don't -- I don't remember me saying that to
17 him. Something to that effect may have been said at some
18 point, but I don't recall myself saying that.

19 Q. Was he ever told, This is judgment day?

20 A. I would have to listen to the interviews again.

21 Q. How many agents interviewed him at a time? Was it just
22 one agent with him, or was it a number of agents sitting with
23 this one individual, Syed Haris Ahmed?

24 A. It was -- I could go interview by interview.

25 The first interview, there were two of us.

1 The second interview, there were three of us.

2 The third interview, I believe there were three of us as
3 well.

4 The fourth interview, there was three of us, but most of
5 the time one of us was -- would leave the room once in a
6 while. And I think Special Agent Allen was brought in to ask
7 a few questions during the fourth interview.

8 And during the fifth interview, there was only one --
9 two agents. I was not present during the fifth interview.

10 Q. And in all these interviews, Mr. Ahmed was by himself in
11 terms of he had no one -- none of his family or relatives or
12 friends with him; correct?

13 A. No. We asked Mr. Ahmed to come and answer questions,
14 not his family.

15 Q. Does it -- from your experience, does it happen that
16 when FBI agents interview any individual, that they feel
17 intimidated?

18 A. That who, the FBI agents feel intimidated?

19 Q. That being the interviewee being interviewed feels
20 intimidated, especially if there are multiple agents
21 interviewing him at the same time?

22 A. I have interviewed some individuals who have told me
23 they felt intimidated, but I don't really know how people
24 feel unless they tell me.

25 Q. To your knowledge, was Haris -- Mr. Ahmed ever

1 interviewed by FBI agents prior to your interviews of him or
2 these set of interviews that took place?

3 A. Yes, he was.

4 Q. So it was his first encounter with the FBI?

5 A. Which?

6 Q. It was Mr. Ahmed's first encounter with the FBI?

7 A. Which was?

8 Q. In March.

9 A. No. I answered your question that he -- to my
10 knowledge, he was interviewed previously by FBI agents.

11 Q. Oh, at the airport you mean?

12 A. Correct.

13 Q. But in terms of interviews for the purpose of a criminal
14 investigation, this was his first encounter or series of
15 encounters; correct?

16 A. Regarding the subject matter, yes.

17 Q. Whereas the airport interviews were more or less routine
18 type of interviews; correct?

19 A. The airport matter was routine. But I mean, the
20 objective at that point also was to figure out what he had
21 been doing in Pakistan.

22 Q. But travelers who are traveling overseas or through
23 airports, it's routine, those are routine interviews, it's
24 expected more or less, people expect it?

25 A. It depends on what kind of traveling. I would have --

1 I'm not sure I understand the question, I guess.

2 Q. The question is that when people are traveling, they
3 expect or they are ready to be interviewed, or it's not
4 something out of the blue or threatening? It's not --
5 whereas the interviews in March, which were interviews for
6 the purpose of a criminal investigation, that doesn't happen
7 to people routinely; correct? The average person is not a
8 target of an investigation, criminal investigation?

9 A. If you mean an average person that has never
10 committed -- does not commit crimes. People that are targets
11 of criminal investigations have usually at least been alleged
12 to have committed some type of --

13 Q. So in March, this was his first encounter with this type
14 of interviews by FBI agents for this type of an
15 investigation, and he's clearly being interviewed on -- he's
16 one of the subjects of this investigation; correct?

17 A. Clearly at this point in time. At this point, I mean
18 today, yes.

19 Q. And when such statements are said to him such as, Do you
20 want to spend the rest your life in a six-by-six, this is
21 judgment day, and he himself opens up and tells the agents
22 that his heart is pounding, I understand that there is not a
23 gun pointed to his head, but is there a degree of
24 intimidation that was -- that the agents within the
25 boundaries of the law were applying to him?

1 A. During the interview, we were trying to get truthful and
2 accurate information. And if we felt we were not getting
3 that type of truthful, accurate information, certain phrases
4 were used: You could -- this would be a problem for you, you
5 may be in trouble, things like to that effect, if that's what
6 you are referring to.

7 MR. SADEQUEE: That would be it. Thank you.

8 THE COURT: Any redirect?

9 MR. McBURNEY: Yes.

10 -- -- --

11 REDIRECT EXAMINATION

12 BY MR. McBURNEY:

13 Q. Just to clear up one thing, Agent Richards. When you
14 described both on direct examination and cross-examination
15 you were getting answers you didn't like or you didn't think
16 were truthful, do you mean that you had objective evidence
17 that contradicted what Syed Haris Ahmed was telling you in
18 the interviews, or you just didn't like his demeanor and so
19 that's when you were going to say, Hey, you are going to get
20 in trouble now?

21 A. Usually we had objective evidence that showed that he
22 was not providing us with truthful answers to our questions.

23 MR. McBURNEY: Okay. Thank you.

24 THE COURT: All right. Does anybody want
25 Agent Allen subject to recall?

1 MR. MCBURNEY: This witness is not subject to
2 recall from the government.

3 THE COURT: Well, you don't want Agent Allen
4 subject to recall, do you?

5 MR. MCBURNEY: He's now long gone.

6 THE COURT: I'm just checking.

7 Well, for this agent then, Agent Richards, let me
8 ask my second line of questions.

9 MR. MCBURNEY: Same answer, not subject to recall,
10 please.

11 THE COURT: Mr. Sadequee?

12 MR. SADEQUEE: No.

13 THE COURT: You are being released. Please don't
14 discuss your testimony with anyone until you hear the case is
15 over. Thank you for being with us.

16 I thought your next witness would be Agent Allen,
17 but now that we know he's not subject to recall, please call
18 your next witness.

19 MS. COLLINS: The government calls
20 Catherine Wilz.

21 -- -- --

22 CATHERINE WILZ

23 being first duly sworn by the Courtroom Deputy, testifies and
24 says as follows:

25 -- -- --

1 DIRECT EXAMINATION

2 BY MS. COLLINS:

3 Q. Good morning. Could you please state your name and
4 spell your last name for the court reporter?

5 A. Catherine Wilz, W-i-l-z.

6 Q. Where do you work?

7 A. I work with the Department of Defense, Defense Criminal
8 Investigative Service.9 Q. And are you affiliated with the Joint Terrorism Task
10 Force?

11 A. Yes, I am. I'm currently detailed to the Atlanta JTTF.

12 Q. And how long have you been with the JTTF?

13 A. August of 2004.

14 Q. How long have you been -- are you a special agent?

15 A. I'm a special agent.

16 Q. How long have you been a special agent?

17 A. Over ten years.

18 Q. And what has been your role in this investigation in
19 this case?20 A. I am one of the primary case agents for the Syed Haris
21 Ahmed investigation. I have also worked closely with
22 Agent Scherck and assisted him on this case.23 MS. COLLINS: Could we put up Exhibit 260, which is
24 a demonstrative exhibit?

25 BY MS. COLLINS:

1 Q. Do you recognize this e-mail address?

2 A. Yes, I do.

3 Q. And did the FBI come to learn who -- whether Mr. Ahmed
4 used this e-mail address?

5 A. Yes.

6 Q. And can you describe the circumstances where the FBI
7 came to learn that?

8 A. While under surveillance by FBI, I don't know what their
9 title is, the people who were doing the surveillance observed
10 the Defendant Ahmed at the Dawson County Library on a
11 computer. And when they went back and pulled up the history,
12 that e-mail account was identified.

13 Q. And what date did that happen on?

14 A. That happened on March 21, 2006.

15 Q. Had the FBI ever before seen Mr. Ahmed using that public
16 library, the computer at that public library?

17 A. No.

18 Q. Now, did the FBI subsequently acquire e-mails related to
19 this account?

20 A. Yes.

21 Q. Actually before we move on, this is -- the e-mail
22 account that I just wrote up on Exhibit 1 is the account we
23 have been talking about used by Mr. Ahmed?

24 A. Yes.

25 Q. On your desk should be Exhibit 268?

1 A. Yes.

2 Q. Do you recognize that?

3 A. Yes, I do.

4 Q. What is it?

5 A. It's an e-mail.

6 Q. From whom?

7 A. Dannymoore1126@yahoo.fr.

8 Q. Was that Mr. Ahmed?

9 A. Yes.

10 Q. And who is the person he's sending it to?

11 A. We believe it to be the Defendant Ehsanul Sadequee.

12 MS. COLLINS: At this point, Your Honor, the
13 government tenders Exhibit 268.

14 THE COURT: Any objection?

15 MR. SADEQUEE: No objection.

16 THE COURT: It's admitted.

17 MS. COLLINS: Thank you. If we could put it up on
18 the screen.

19 BY MS. COLLINS:

20 Q. You mentioned this is from Dannymoore1126,
21 Mr. Ahmed. What's the date on this?

22 A. March 21, 2006.

23 Q. Now, how does the time stamp which is next to it
24 correlate to the time in which Mr. Ahmed was seen using the
25 Dawson County Library using this account?

1 A. It corresponds to that time.

2 Q. And the CET is?

3 A. Central European Time because of the Yahoo! France.

4 Q. So when you change that to Eastern Standard Time, it's
5 the same time?

6 A. Correct.

7 Q. Let's take a look at the first paragraph. Can you read
8 that to the jury, please?

9 A. Peace be on you. The dogs came to me. This
10 time they were not usual. They had done their
11 homework. They even had info regarding both of our
12 trips.

13 Well, when they brought up the thing about our
14 second trip, they got me. I was not prepared for
15 that due to my own shortcomings in faith. So in
16 the first meeting, I slipped, F-D.

17 Q. Let me ask you about the reference, This time they were
18 not usual. Before the round of interviews in March of 2006,
19 how many times had the FBI interviewed Mr. Ahmed?

20 A. I recall two times. There was a time when he came in
21 from Pakistan where he was interviewed at the airport, and
22 there was another time when he was interviewed because he had
23 been seen with PVC piping, and so some agents interviewed him
24 in relation to that.

25 Q. And in the second line when he says, They have info

1 regarding both of our trips, what trips? How many trips did
2 the FBI -- how many trips did Mr. Ahmed make with
3 Mr. Sadequee that the FBI had asked about?

4 A. These were the two trips, one to Canada, one to
5 Washington, D.C.

6 Q. And which one would have been the second trip?

7 A. The second trip was the Washington, D.C., trip.

8 Q. Okay. Let's continue on to the next paragraph.

9 A. And then after, I prayed to God, and slowly
10 I regained my confidence. Then it was all damage
11 control after that.

12 Basically I told them, which is true to the
13 best of my knowledge, that we were kids who got
14 just excited. They asked what you meant by saying
15 T has a great idea in one of our conversations.
16 They had all conversations between us.

17 So I told them the truth, that it was the idea
18 of mine to by make some cool video, and I took my
19 car and my camera for that purpose and you just
20 hopped on the chance for a free trip.

21 Q. Let me interrupt you for a second and just ask a
22 question.

23 T, who is that -- who has that referred to throughout
24 the communications we have seen?

25 A. T is Turab, the defendant Syed Haris Ahmed.

1 Q. And talking about make some cool video, what video is
2 being referred to here?

3 A. The Washington, D.C., videos.

4 Q. Continue after the for a free trip?

5 A. Then they asked what is Mother's Day and
6 picnic. I told them the truth, that we wanted to
7 go to Curry Place and picnic, and Mother's Day
8 meant our meeting there. It was called picnic
9 because we would go there and be together, so it
10 would be sort of a picnic.

11 Then they asked, We know you are into the J,
12 so you must have talked about ideas.

13 I was like, Yes, I hated the Free Masons, so
14 I wanted to meet them one day. And at some point
15 in my life I hated the Yanks too. But basically it
16 was all childish stuff but I'm over it now, and
17 that since I knew they were after me since I came
18 here, I told you to come by the Maricustus route,
19 which meant by sea.

20 Q. Just going back up to they asked what is Mother's Day
21 and picnic. What was the FBI referring to when they asked
22 about that?

23 A. That's the Mother's Day e-mail that Defendant Ahmed had
24 sent to Sadequee for dissemination.

25 Q. Is that the document where he talks about going to Curry

1 Place and they are all meeting for a picnic?

2 A. Correct.

3 Q. Going on to the third paragraph?

4 A. I could have denied the last trip, but fear
5 overcame me and I accepted it. But after that in
6 all my meetings with them, it was damage control,
7 to tell them that we were kids who got
8 overexcited.

9 In the beginning they seemed mostly interested
10 in you, but if I'm not mistaken they seem a little
11 less interested now.

12 I just pray to God that my initial mistake of
13 accepting that we took those videos could be
14 overcome by my telling them how we were kids. And
15 that's why I think for two days they haven't called
16 me. Otherwise it used to be almost every day they
17 call me to their offices and keep me for hours.

18 Q. What is the last trip? What would that have been? At
19 the top of that paragraph, I could have denied the last trip?

20 A. Oh, that's the Washington, D.C., trip.

21 Q. That was the last trip before these interviews that
22 Mr. Ahmed took, to Washington, D.C.?

23 A. His last trip was his trip to Pakistan.

24 Q. And when he says why for two days they haven't called
25 me, when was the date of the last interview that the FBI

1 conducted prior to this e-mail?

2 A. March 18, 2006.

3 Q. Okay. Continue on to the second to last and last
4 paragraph, please?

5 A. To prove to them how childish we were, I told
6 them how we once -- how once we joked about
7 disabling GPS, and we then went on the Star Trek
8 stuff about lasers and all.

9 Yes, I made a lot of mistakes, but after my
10 initial blunder all my intention was damage
11 control.

12 So if they come after you, be prepared to be
13 asked a lot of questions. Try not to come to
14 Pharaoh Land for some time.

15 Peace be on you.

16 Q. And Pharaoh Land, what does that refer to?

17 A. United States.

18 Q. Now, did the defendant respond to this e-mail from
19 Mr. Ahmed?

20 A. Yes, he did.

21 Q. Can you take a look at Exhibit 269?

22 A. Yes.

23 Q. Is that the defendant's response?

24 A. Yes, it is.

25 Q. And what's the date on that?

1 A. March 23rd, 2006.

2 MS. COLLINS: Your Honor, the government tenders
3 Exhibit 269.

4 THE COURT: Any objection?

5 MR. SADEQUEE: No.

6 THE COURT: It's admitted.

7 MS. COLLINS: If we could put it on the screen,
8 please?

9 BY MS. COLLINS:

10 Q. Okay. So this is to the Danny Moore address that
11 Mr. Sadequee used; correct?

12 A. Right.

13 Q. Okay. Would you go ahead and can you read that, please?

14 A. Peace be on you.

15 Hmm, what are you talking about? I don't get
16 any of it.

17 Hmmm. Anyways, do they know about the True
18 Preaching that I do? Please respond to that
19 question. And I need you to send me a detailed
20 account of what you were asked and what you
21 answered and how much they know about me. Be as
22 much detailed as possible.

23 Download -- a program -- and then encrypt the
24 word doc and then upload it and then give me the
25 link here. I need this ASAP. Peace.

1 Q. That True Preaching, which is capitalized, TP, what does
2 TP stand for?

3 A. TP is Tibyan Publications.

4 Q. Now, was -- at some point after Mr. Ahmed sent the
5 e-mail on March 21, 2006, was he arrested by the FBI?

6 A. Yes, he was.

7 Q. And were you present?

8 A. Yes.

9 Q. Was he detained in custody after that day?

10 A. Yes, he was.

11 Q. What, if anything, did the FBI proactively do with the
12 Dannymoore1126@yahoo.France account?

13 A. The FBI, we drafted -- we wrote out some e-mails, and we
14 sent them posing as Syed Haris Ahmed.

15 Q. And who did you send them to?

16 A. Defendant Sadequee.

17 Q. And what was the purpose in doing that?

18 A. The purpose of that is we were trying to make sure or
19 give Defendant Sadequee the thought that Haris Ahmed had not
20 been arrested. We did not want him to know that
21 Defendant Ahmed had been arrested.

22 Q. Did you -- were you at all interested in seeing what the
23 defendant's response would be to the further e-mails?

24 A. Yes.

25 Q. And who wrote those e-mails for the FBI?

1 A. I did.

2 Q. And how many did you write?

3 A. Two.

4 Q. Did the defendant respond to each one?

5 A. Yes.

6 Q. Take a look at Exhibits 271 and 273, which should also
7 be on your table.

8 A. Yes.

9 Q. What are those?

10 A. Those are his responses.

11 Q. To your two e-mails?

12 A. My my e-mails.

13 MS. COLLINS: Okay. Your Honor, the government
14 tenders Exhibit 271 and 273.

15 THE COURT: Any objection?

16 MR. SADEQUEE: No, no objection.

17 THE COURT: They are admitted.

18 MS. COLLINS: Thank you.

19 BY MS. COLLINS:

20 Q. We can start with Exhibit 271 on the screen. What's the
21 date of this e-mail?

22 A. April 4, 2006.

23 Q. And in the e-mail that you had sent to which this is the
24 response, had you asked the defendant any questions?

25 A. I had asked him if he had been approached by law

1 enforcement. I don't remember the exact phrasing, but that
2 was the gist of it.

3 Q. And how does he respond to that? Go ahead and read the
4 first paragraph.

5 A. No, so far I have not been taken in for any
6 Q'ing other than in Augie when I came at the
7 birdport in J ef kay.

8 Q. The birdport in J ef kay, what is that reference to?

9 A. The airport, John F. Kennedy Airport.

10 Q. And that was the interview with Agent Scherck?

11 A. Correct.

12 Q. And continue on.

13 A. Please send me a detailed account ASAP, keep
14 me updated. Do they know you are AT and me Bread?

15 Q. AT, who is that?

16 A. Aboo Turab, Syed Haris Ahmed.

17 Q. And Bread, what is that a reference to?

18 A. That's Khubz.

19 Q. Is that a nickname for the defendant?

20 A. It's a nickname for Defendant Ehsanul Sadequee.

21 Q. Then Exhibit 273?

22 In between 271 and 273, had you written another e-mail
23 to the defendant?

24 A. Yes, I did.

25 Q. And had you asked him any questions in that?

1 A. Yes.

2 Q. What did you ask?

3 A. Again I would have asked him has law enforcement
4 approached him.

5 Q. What is the date on this response?

6 A. April 16, 2006.

7 Q. Okay. Go ahead and read -- read the first couple of
8 paragraphs?

9 A. Peace. We know for sure that our house over
10 here is under surveillance. We have witnessed them
11 with our own eyes.

12 I need detailed account. Why do you refuse to
13 send it to me? This is urgent.

14 I have got some Q's you need to answer:

15 What do you mean "they found our vds on the
16 bro's comp"? Who? You mean the nude beach ones?
17 If so, and along with your confession that you shot
18 the vids, they can piece two and two together, and
19 they know for sure that me and you are T and K.

20 Q. When he says, What do you mean they found our vids on
21 the bro's comp, is that -- had you made a reference to that
22 in one of your prior e-mails?

23 A. I did. I had said that they, law enforcement, had found
24 the Washington, D.C., videos on the brother's, the brother's
25 overseas computer.

1 Q. And they know for sure that me and you are T and K. Who
2 are T and K?

3 A. Turab is Syed Haris Ahmed, and K is Khubz,
4 Ehsanul Sadequee.

5 Q. Continue on, please?

6 A. That was your biggest mistake. I don't know
7 why you didn't read the material I had told you to
8 read before. If you had read them, then you would
9 not have fallen into the great damage you have
10 brought onto all of us.

11 Then there is a link to a website.

12 Read through all of that, memorize it, and be
13 ready for next time.

14 Q. Continue on to the last paragraph?

15 A. Again: Send me a detailed account of what
16 took place, what was said, questioned, answered,
17 et cetera, during the sessions, all of them,
18 A to Z. This is important, so that when/if I am
19 taken, I can answer accordingly. Or if they find
20 discrepancies, they will take us both for longer
21 and worser.

22 Please give me the account ASAP. Peace.

23 Q. Do you know when the defendant was arrested in
24 Bangladesh?

25 A. He was arrested by the FBI on April 19th, 2006.

1 Q. So just a few days after this last e-mail?

2 A. Correct.

3 MS. COLLINS: No further questions, Your Honor.

4 THE COURT: All right. Any cross?

5 MR. SADEQUEE: Yes.

6 -- -- --

7 CROSS-EXAMINATION

8 BY MR. SADEQUEE:

9 Q. Good afternoon. Could we go to Exhibit 149?

10 MS. COLLINS: What's the date on that?

11 That is Exhibit 269.

12 BY MR. SADEQUEE:

13 Q. On the second paragraph here when I go, Hmmm, anyways do
14 they know about the True Preaching that I do? You mentioned
15 that this is a code for Tibyan Publications?

16 A. That's what we assessed it to be, yes.

17 Q. So after Haris tells -- Mr. Ahmed tells me that he's
18 been interviewed by the FBI, my first concern is do they know
19 about Tibyan Publications; is that correct? Or the first
20 question I'm asking him is do they know about Tibyan
21 Publications?

22 A. First you ask him, What are you talking about?

23 Q. Well, when I say, Do they know about the True Preaching
24 that I do, in relation to the FBI, I mean, the do they, they
25 refers to the FBI?

1 A. Correct.

2 Q. So in relation to his interview by the FBI, my first
3 concern is Tibyan Publications; is that correct?

4 A. I don't know if it was your first concern. That's what
5 you mention here.

6 Q. It's the first thing I mention in this e-mail was in
7 relation to the FBI's interviews; correct?

8 A. Okay.

9 Q. Is that correct?

10 A. It's what you mention here, yes.

11 Q. Okay. If we may go to Exhibit 228? There is a chat,
12 September 19th, if we may go to 8:11:55 a.m.?

13 MS. COLLINS: Page 41.

14 Q. Right after -- this is a conversation about my FBI
15 interview at JFK Airport. Can you read from there?

16 A. I'm sorry, where are you at?

17 Q. This is 8:11:55 a.m., September 19th.

18 A. What did they ask you? Just for personal
19 information, in case the situation ever arises.

20 Q. If you could continue to read?

21 A. Just like, what do you do, where do you work,
22 study, why you doing to B, where you going to stay,
23 et cetera.

24 Q. Continue.

25 A. I see.

1 But that's because they don't know jack about
2 me. Then you say, LOL. About TP.

3 Q. Now, this is in reference to the JFK interview;
4 correct?

5 A. Yes.

6 Q. And again here I mention TP, correct, Tibyan
7 Publications?

8 A. Correct.

9 Q. And I'm not concerned with my visit to D.C. or Canada;
10 is that correct? I had not mentioned it in this e-mail;
11 correct?

12 A. I would have to look at the whole chat, but from what I
13 have read, no, you did not mention the D.C. or Canada
14 trips. But you mention what you do, where you were, where
15 you were going.

16 Q. That's -- am I there rephrasing or summarizing what I
17 was interviewed about, questions that I was asked by the FBI
18 at JFK?

19 A. Correct.

20 Q. So in this e-mail and in this chat, when I say, They
21 don't know jack about me or about TP, would it be accurate to
22 say that my main concern or my main or primary fear in
23 relation to my activities would be my activities with Tibyan
24 Publications, the publications?

25 A. I don't understand. Could you rephrase the question?

1 Q. In Exhibit 269 and 228 where I am -- this is after
2 Haris's -- after I find out about Haris's interview, and in
3 this one, this is after I am interviewed by the -- at JFK by
4 the FBI.

5 A. Right.

6 Q. In both places, is it true that I'm not mentioning
7 D.C. as a concern to me or my visit to Canada as a concern to
8 me?

9 A. Well, you ask him for a detailed account of what you
10 said. I don't know what you were thinking, what you call --
11 and in earlier e-mails, you were informed by Haris that the
12 FBI did ask him about the D.C. and Canada trips.

13 I guess I don't understand your question.

14 Q. In your assessment of the post-Haris interview, the
15 post-Haris notifying me of his being interviewed, I am
16 saying -- if I may just read out from what I wrote to Haris:
17 Anyways do they know about the True Preaching that I do?
18 Please respond to that question.

19 Out of all the things I could have asked him about, do
20 they know about D.C., do they know about the trip to Canada,
21 why do you think that I asked him about Tibyan Publications,
22 the True Preaching that I do?

23 A. Because with --

24 Q. Why would I --

25 A. Why would you care about --

1 Q. Why would I single that out, out of all of the other
2 things?

3 MS. COLLINS: Objection. This calls for
4 speculation.

5 THE COURT: Can you answer the question?
6 I'm going to sustain that objection.

7 MR. SADEQUEE: That would be it.

8 THE COURT: Any redirect?

9 MS. COLLINS: No, Your Honor.

10 THE COURT: Does anybody want Agent Wilz subject to
11 recall?

12 MS. COLLINS: Not from the government, Your Honor.

13 MR. SADEQUEE: No.

14 THE COURT: Agent Wilz, we appreciate your
15 testimony. You are released, but you should not discuss your
16 testimony until you hear the case has been concluded.

17 Call your next witness, please.

18 MR. McBURNEY: Judge, at this time the government
19 tenders Exhibit 1 as a summary exhibit to assist the jurors
20 in connecting monikers with individuals.

21 And with that, we rest our case in chief. We don't
22 have any more witnesses.

23 THE COURT: Any objection to the summary exhibit?

24 MR. SADEQUEE: No.

25 THE COURT: All right. It's admitted as a summary

1 exhibit.

2 The government has rested, meaning that they have
3 concluded their case. I think this is a good time to break
4 for lunch before we get into the next part of the
5 proceedings.

6 We will convene for lunch for an hour. We will
7 begin again at 1:10.

8 Again, only part of the case is in. You certainly
9 can't deliberate until you have my instructions, which you
10 have not received, so please do not discuss the case among
11 yourselves or with anyone else. We will see you in about an
12 hour.

13 (In open court without a jury present:)

14 THE COURT: The one thing I think I will do, now
15 that we have played the exhibits, as you know, I have made
16 certain redactions to remove extraneous materials from the
17 exhibits that we just saw, I usually give a redaction
18 instruction explaining the redactions were made where
19 I determined that the information is not related to the case,
20 just because I think people want to know what the black boxes
21 are.

22 Is there any objection to me giving that
23 instruction?

24 MR. McBURNEY: No.

25 MR. SADEQUEE: No objection.

1 THE COURT: All right. Then I will draft something
2 up and try to get it to you before I actually give it.

3 All right. Anything we need to discuss before we
4 adjourn for lunch?

5 Any motions, for example, to be made?

6 MR. McBURNEY: Nothing from the government.

7 THE COURT: Anything from the defense?

8 MR. SAMUEL: Could I discuss it with him during
9 lunch?

10 THE COURT: You may. If we are going to do that,
11 can we come back about ten minutes early?

12 MR. SAMUEL: It won't take but three minutes, but,
13 yes.

14 THE COURT: All right.

15 MR. SAMUEL: I will explain what the process is.

16 THE COURT: Then we will just reconvene at the
17 regular time.

18 And over lunch I'm going to look at my revisions
19 that I have made over the weekend on the instructions, those
20 where I have combined certain elements of the proposed
21 instructions into a single element, and give you a chance to
22 look at those before we have our conference.

23 Now, just timing, maybe I can get a more accurate
24 read on examinations now that we are done with Mr. Kohlmann
25 since that went somewhat longer than I was told, although

1 I think I understand why.

2 You have two witnesses still, Mr. Sadequee?

3 MR. SADEQUEE: Yes.

4 THE COURT: And how long do you think the first
5 witness will take?

6 MR. SAMUEL: If I could ask, we did a deposition,
7 she's here. He's literally going to read the deposition, use
8 that as a format. It's 46 pages including the cross.

9 The videotape itself, which we offered to play not
10 having the witness here, but unfortunately -- not
11 unfortunately, she's in town -- I think it goes forty-five
12 minutes. It may take a little longer.

13 THE COURT: Forty-five you think?

14 MR. McBURNEY: That would be round trip, that would
15 be both sides, and that's probably a little longer, because
16 we weren't sure how the deposition would be tailored. We
17 might have gone further than we needed to with that.

18 THE COURT: Well, I understand he's going to ask
19 every question that's in the deposition, so it looks like it
20 will probably go that long.

21 MR. McBURNEY: Okay.

22 THE COURT: Unless Mr. Samuel wants to help him
23 remove some of those if they are not really material to the
24 case. But if he wants to read all those questions, I guess
25 he can.

1 And then how about the second witness? How long is
2 the second witness?

3 MR. SADEQUEE: I think somewhere between thirty
4 minutes and one hour, somewhere in between that.

5 THE COURT: All right. And how long do you think
6 the cross of the second witness will be?

7 MR. McBURNEY: I suspect it would be ten -- it's
8 the defendant's sister. I don't think we will do a whole lot
9 with that situation.

10 THE COURT: All right.

11 MR. McBURNEY: I do want to raise -- we flagged it
12 I think on Friday, the issue of character witnesses and
13 what's the appropriate scope of character witnesses.
14 Mr. Samuel assured us he would talk with his client, the
15 defendant, who will be asking the questions.

16 We, perhaps more so than in the deposition,
17 particularly because now Syed Haris Ahmed has testified --
18 when the deposition was taken no one thought he would be
19 here -- we will be all the more vigilant in objecting to
20 improper character questions.

21 As I think about what these two witnesses know
22 about the facts of the case as opposed to about the defendant
23 or, in Ms. Ahmed's case, her brother, I think we may be
24 bumping into that some.

25 So I just want to flag that for the Court.

1 THE COURT: Well, I think it would be helpful if
2 you would go through some specific examples here what your
3 objection would be so that Mr. Sadequee can hear that, so
4 that I can tell him whether or not your objections make sense
5 under the law.

6 MR. McBURNEY: Sure. Well, a concrete example
7 would be that Ms. Ahmed testified both at the trial of
8 her brother and during the deposition about how Syed Haris
9 Ahmed was a peace-loving person and he loved to do good
10 things for people, an example of how he would ask his mother
11 to bake a certain meal, cook a certain meal for friends when
12 they come over, that has nothing to do with this case. It's
13 a specific example of I guess you could call it good
14 character on Syed Haris Ahmed's part, and it's not
15 appropriate.

16 As a concrete example, I suspect that if the
17 defendant's sister is going to be on the stand for close to
18 an hour, we are going to get into examples of a good deed the
19 defendant did while he worked at Raksha, a particular
20 conference about empowering women or helping battered women.
21 That's inappropriate.

22 And the question may start out appropriate, well,
23 tell me what you know about my --

24 THE COURT: Excuse me.

25 Mr. Sadequee, the purpose of this is for you to

1 listen to it. Are you listening to what Mr. McBurney has
2 said rather than going through these, looking through these
3 papers?

4 Because you need to understand what the scope of
5 your examination of these witnesses can be, so would you
6 please listen?

7 MR. McBURNEY: With the sister, the defendant's
8 sister, the concern is that a seemingly innocuous question,
9 Describe my work at Raksha -- it's really not about his
10 character, but it's a little bit of his background -- could
11 very easily segue without a subsequent question into specific
12 good acts that the defendant participated in that aren't for
13 the jury's consideration in this trial.

14 And so that's the concern. I am confident
15 Mr. Samuel has talked to the defendant about it, but I'm
16 flagging it now in a more open forum so that the defendant
17 can acknowledge, if he chooses to, that he's aware of the
18 restrictions imposed by the Rules of Evidence on character
19 evidence.

20 THE COURT: All right. Have you read the
21 restrictions on character evidence at a criminal trial?
22 They would be in the Rules of Evidence that you promised to
23 me that you would read and study.

24 MR. SADEQUEE: I would like -- I would review
25 them. I wasn't intending to go into all the good things I

1 have done.

2 THE COURT: I know that, but you in fact did
3 that with Ms. Bhattacharyya. So I do believe that you
4 tend to lapse into that about the things that you did and
5 you were a good worker and elicited her opinion of what
6 a good worker you were and that you had done good things
7 and that you treated people kindly when they came to visit
8 the nonprofit. Those are all questions I know you have
9 asked.

10 You need to talk to Mr. Samuel and get clear
11 direction from him as to the limited scope of character
12 evidence now that we are calling your witnesses. Do you
13 understand that?

14 Does the defense intend to only present two
15 witnesses?

16 MR. SADEQUEE: Yes.

17 THE COURT: All right. Do you intend to testify?

18 MR. SADEQUEE: Do I have to make a decision right
19 now?

20 THE COURT: You will need to make a decision and
21 let me know after lunch.

22 MR. SADEQUEE: Okay.

23 THE COURT: Because I have to make an inquiry of
24 you before the conclusion of your case to make sure that it's
25 clear as to what your intention is; clear to me, that is.

1 All right. Anything else we need to discuss before
2 we break for lunch?

3 MR. McBURNEY: No, sir.

4 THE COURT: Anything else?

5 MR. SADEQUEE: No, sir.

6 THE COURT: All right. We will be back at 1:10.

7 (A recess is taken at 12:19 p.m.)

8 -- -- --

Monday Afternoon Session

August 10, 2009

1:17 p.m.

-- -- --

(In open court without a jury present:)

THE COURT: First, did everybody have a chance to review the redaction instruction?

MR. McBURNEY: Yes.

THE COURT: Any objection to it?

MR. McBURNEY: Not from the government.

THE COURT: Any objection from the defense as to the redaction instruction?

MR. SADEQUEE: No.

THE COURT: All right. One housekeeping matter. What was the exhibit number for the exhibit that the defendant introduced, 5?

MR. SAMUEL: It was the *Federal Register*; right? It was 5.

THE COURT: 5.

MR. McBURNEY: Mine has a 5 on it.

THE COURT: All right.

MR. WAHID: We missed 2, so what happened -- anyway.

THE COURT: So we admitted Defense Exhibit 5; correct?

1 MR. SADEQUEE: Yes, it's the *Federal Register* about
2 Jumat ud-Dawa being entered -- being designated as a foreign
3 terrorist organization as of April 27th of 2006.

4 THE COURT: All right. What else do we have?

5 MR. SADEQUEE: I had a motion to --

6 THE COURT: Go ahead.

7 MR. SADEQUEE: I move for a judgment of acquittal
8 on all four counts on the basis that the government has not
9 shown that:

10 One, I did not provide material support to support
11 a violation of either 2232 (b) or 956.

12 (A), nobody testified that the video was intended
13 or did provide material support for any purpose.

14 (B), Haris Ahmed did not agree to commit any crimes
15 of violence in the United States, so there is no 2332 (b),
16 and there was no showing that he intended to commit any
17 violence in a foreign country.

18 There is no showing of any conspiracy -- two, there
19 was no showing of any conspiracy or serious attempt to join
20 LeT.

21 And three, LeT did not exist in 2005. The
22 organization was named Jumat ud-Dawa, JuD, and it was not on
23 the terrorist list until 2006, which is Exhibit 5.

24 THE COURT: All right. Anything else?

25 MR. SADEQUEE: No.

1 THE COURT: What's the government's response?

2 MR. McBURNEY: As the Court knows, the standard for
3 assessing a Rule 29 or a motion for acquittal is to view all
4 the evidence in the light most favorable to the government
5 and draw all the reasonable inferences and credibility
6 determinations in favor of the government.

7 And having done that, the question then is could a
8 reasonable trier of fact find the defendant guilty beyond a
9 reasonable doubt.

10 As to Counts One and Two, I suggest we are well
11 past that. There has been ample evidence that there was a
12 conspiracy, Count One, an agreement to provide material
13 support, whether it was people or these videos, for some
14 terrorist conspiracy, whether it be one to commit acts
15 overseas or in the United States.

16 In terms of Count Two, the attempt, there has been
17 evidence of more than a substantial step. At a minimum, we
18 have Syed Haris Ahmed going to Pakistan. If that's the
19 particular strand of the defendant's activity we are going to
20 follow, we also have all this evidence of what was going on
21 in Bosnia, his close co-conspirator, with whom the defendant
22 had e-mail, chat and telephonic communication, gathering the
23 armaments and having the arsenal.

24 Counts Three and Four, I think we meet the
25 standard. I acknowledge it's a closer call, but this is a

1 very, very favorable standard for the government. And there
2 has been evidence that a reasonable juror can rely upon that
3 one of the focuses of we will call it the Mother's Day
4 conspiracy involving the defendant, Syed Haris Ahmed, the
5 Canadians, and Aabid Hussein Khan -- there has been
6 uncontradicted testimony that he, Khan, was a facilitator for
7 LeT training camps -- that those individuals had conspired to
8 get to an LeT training camp.

9 Not that that was necessarily the ultimate goal,
10 but that's not what the government needs to show. The
11 government needs to show that there was an agreement to
12 provide personnel that at some point would be under the
13 direction and/or control of LeT, and while in a training camp
14 that's precisely what Syed Haris Ahmed or the defendant or
15 Aabid Hussein Khan would be.

16 And in terms of Count Four, a concrete step in that
17 direction, we have all the arrangements made with Mr. Khan as
18 well as Syed Haris Ahmed's travel to Pakistan, hardly a small
19 step, where he in fact met with Aabid Hussain Khan to discuss
20 these very issues.

21 So the government's position is that we have met
22 the burden to survive a motion such as this.

23 THE COURT: Anything further from you,
24 Mr. Sadequee?

25 MR. SADEQUEE: No.

1 THE COURT: All right. Well, I find under the
2 standard that is set forth in Rule 29 that there is
3 sufficient evidence to sustain a conviction against the
4 defendant on all four counts, and the motion is denied.

5 So now we go on to the defense case. There was one
6 other matter you were going to discuss amongst yourselves
7 over lunch about the defendant's testimony. Have you done
8 that?

9 MR. SADEQUEE: At this point I don't think I am
10 going to be testifying, but I would like to ask if after my
11 two witnesses, if I do change my mind, would I be able to
12 testify?

13 THE COURT: Well, I will just wait until after the
14 two witnesses and determine then whether you made a final
15 decision.

16 Can we do something about that buzz, Jessica?

17 MR. McBURNEY: You didn't ask if there was
18 anything else, and we did have something.

19 THE COURT: What else is there?

20 MR. McBURNEY: I'm sorry, we were presented
21 reciprocal discovery during the lunch break, items the
22 defendant intends to admit through his sister. They fall
23 into three categories: Things related to the wedding in
24 Bangladesh, some school and test records, and then finally a
25 book from Tibyan.

1 THE COURT: First of all, why was that so late,
2 Mr. Sadequee, under your obligations -- and your lawyers
3 understand their obligation -- to provide reciprocal
4 discovery to the government in a timely manner? And if so,
5 why wasn't that obligation met?

6 Mr. Samuel, since you have been responsible for
7 this case until today, I would like your explanation first.

8 MR. SAMUEL: Sure. Your Honor, some of the --
9 well, can I begin by saying I think the government doesn't
10 object to most of it, for what it's worth. A lot of it is
11 very simple evidence about his school records there.

12 Some of it we just did not have, wasn't even in
13 this country until recently.

14 THE COURT: How recently?

15 MR. SAMUEL: I am going to have to check with the
16 family as to when it arrived. I think some of it actually
17 arrived over the weekend.

18 THE COURT: When did you first learn about it?

19 MR. SAMUEL: Well, I got e-mails last night.

20 I want to be careful because that's my
21 understanding of what happened. I'm not 100 percent sure
22 about that. I need to check with the family.

23 But they are very simple kind of school records
24 from Bangladesh University he attended, the wedding, the cost
25 of the wedding. Some of these issues didn't come up until

1 during the course of cross-examination.

2 The amount of money he took out of his bank
3 account, that's actually a government -- from the
4 government's discovery to us, the bank records showing the
5 amount --

6 THE COURT: Well, that's an issue that's been
7 present in this case for a long time.

8 MR. SAMUEL: The money?

9 THE COURT: Yes, and it was clearly something that
10 was anticipated by the defense because they discussed a lot
11 about that on cross-examination. So I'm not accepting that
12 that was a surprise to you at all.

13 MR. SAMUEL: Well, it's not a surprise. We have
14 the bank records. What was not clear to us was the
15 significance of it.

16 And in fact, to be honest with you, the government
17 at one point asked me whether I would stipulate to the
18 admissibility of the bank records, and I said sure.

19 So I actually thought the bank records were going
20 to come in through one of the government's witnesses. These
21 are records they gave us, and I thought the records were
22 going to come in through one of the government's witnesses.

23 Again, I don't think there is any controversy about
24 these exhibits. There is nothing that would -- I mean, you
25 can take a look at them, they are all up here. They are

1 photographs and all. I don't have a problem --

2 THE COURT: Well, there is some controversy;
3 otherwise, it wouldn't have been brought to my attention
4 outside the presence of the jury.

5 MR. SAMUEL: Right. But if Mr. McBurney can focus
6 on the two exhibits that he's most concerned with, I can more
7 narrowly tailor my response perhaps.

8 MR. MCBURNEY: There are a handful of photographs
9 of the defendant's wedding and a multihour video of his
10 wedding.

11 It was explained to us at lunch that the photos
12 would be tendered through the defendant's sister and some
13 segments of the video were to be played through the sister.
14 Our objection is focused on those two.

15 There is no contest here that the defendant was
16 married. In fact, one of the exhibits we were given at lunch
17 is the certificate of marriage from Bangladesh, and we don't
18 intend to oppose that in any way.

19 But what went on at the wedding and how people
20 looked and, for example, footage of the defendant and his
21 bride feeding each other, that has nothing to do with this
22 case and only to do with the fact that at some moment in
23 time, there was a peaceful video of the defendant and his
24 bride-to-be or maybe by that time his wife exchanging a
25 tender moment. And that's not appropriate here.

1 So rather than get up and object when the witness
2 is there, because we actually did get to see this a few
3 minutes before the witness took the stand, I wanted to flag
4 photos and videos as something we don't think are relevant,
5 in particular given that if called upon we will stipulate
6 that the defendant did in fact get married apparently under
7 the laws of Bangladesh to the woman whose name was mentioned
8 in the defendant's opening statement. We have never
9 contested otherwise.

10 THE COURT: What's the relevance of the videotape
11 and the photographs?

12 MR. SADEQUEE: To demonstrate the expenses, the
13 money expended and all of the wedding costs and how --

14 THE COURT: How do photographs establish who paid
15 for the wedding?

16 MR. SADEQUEE: It would go along with other
17 documentation that I have about the expenses.

18 THE COURT: Then the photographs are cumulative.
19 If you have got evidence as to the dollar amounts that were
20 spent, what do the pictures add to that evidence, considering
21 that the government apparently is not going to contest that
22 the money was spent?

23 MR. SADEQUEE: Well, to demonstrate a wedding did
24 take place.

25 THE COURT: That's not at issue apparently. So how

1 are they relevant?

2 MR. SADEQUEE: Well, I believe it's relevant from
3 the point that it would demonstrate what I was doing in
4 Bangladesh and the time and effort behind the wedding, the
5 marriage, and the various time-consuming --

6 THE COURT: Isn't your sister going to testify that
7 there was a wedding and that you were there and that she saw
8 you get married?

9 MR. SADEQUEE: She did not attend the wedding
10 herself. She was in the States over here.

11 THE COURT: So who is going to authenticate the
12 pictures?

13 MR. SADEQUEE: Well --

14 THE COURT: Who is going to identify the pictures
15 if she wasn't there?

16 MR. SADEQUEE: She knows the individuals.

17 THE COURT: Yeah, but she wasn't there. So if she
18 knows the individuals, she doesn't -- she can't authenticate
19 the pictures. Somebody has to authenticate that they are
20 true and accurate representations of what occurred in the
21 pictures or the videotape, and she can't do that.

22 So how are you going to authenticate the exhibits?

23 MR. SADEQUEE: Well, she knows the individuals in
24 the pictures.

25 THE COURT: It doesn't matter. Somebody has to

1 authenticate that what's depicted on the pictures are a true
2 and accurate representation of what occurred on the date and
3 at the time the pictures were taken. Who is going to do
4 that, since we now know she can't because she wasn't there?

5 Mr. Samuel will tell you that you have to have
6 somebody who authenticates the pictures. So why don't you
7 tell him that, Mr. Samuel, and maybe we can move on instead
8 of whispering all this to him.

9 MR. SAMUEL: Can I show you the pictures? I mean,
10 all she's going to do is identify them.

11 THE COURT: She can't identify them. She wasn't
12 there.

13 MR. SAMUEL: She can't identify the video, I think
14 you are right about that. I know you are right about that.

15 THE COURT: So that's excluded, because there is
16 not -- it can't be authenticated.

17 MR. SADEQUEE: I mean, all they are, they are
18 pictures, and she can say, Yes, that's your wife, that's my
19 father -- that's our father. I mean, they are just a series
20 of photographs.

21 I think a family member can say, Yes, I can
22 identify that's your wife and that's you, without saying,
23 I was there at the moment that picture was taken.
24 Authentication can occur by someone who is not present.

25 THE COURT: Well, is she going to say, Yes, that's

1 you, and that was at the wedding and you had a great
2 wedding?

3 Yeah, I agree, if there is a picture, she can say,
4 Yes, that's Mr. Smith, or, Yes, that's Mr. Ahmed.

5 MR. SAMUEL: That's all these photos will do.

6 THE COURT: Well, I know, but I'm not sure -- he's
7 the one asking the questions, not you, and what he asks is
8 unpredictable.

9 MR. SAMUEL: What I have written down is: Can you
10 identify these photos and who is in them? That's the
11 question I wrote down associated with these pictures.

12 The video I recognize is more problematic.

13 THE COURT: Well, problematic meaning that you
14 acknowledge that it's not admissible because it can't be
15 authenticated?

16 MR. SAMUEL: I think it is true that Sonali cannot
17 say that video correctly reflects what occurred there,
18 because she wasn't there. There is no way she can look at
19 that video and say that's precisely what happened at the
20 wedding because she was four thousand miles away.

21 THE COURT: And you admit that authentication is a
22 prerequisite to admissibility?

23 MR. SAMUEL: I certainly agree that authentication
24 in one form or another is a prerequisite for admissibility,
25 of course.

1 THE COURT: And do you agree that the witness about
2 to be called is not somebody who can authenticate the video?

3 MR. SAMUEL: I don't think she can authenticate the
4 video properly other than to identify the people in it. She
5 could not say that the events depicted, the movements, the
6 people doing things or saying things accurately reflects it
7 because she wasn't there.

8 THE COURT: All right. Well, the video is not
9 admissible because the prerequisites to admissibility can't
10 be met through this witness.

11 With respect to the pictures and somebody
12 saying that's -- well, I'm not -- why is it relevant as to
13 who these people are? What does that have to do with the
14 case?

15 MR. SAMUEL: Well, the government has introduced
16 considerable evidence about him going to Bangladesh, what he
17 was doing there. The chats contain considerable evidence
18 about him getting married. There is some suggestion in some
19 of the chats that it's all fake.

20 You know, just because the government is willing to
21 stipulate to something doesn't mean we are not allowed to
22 prove it. We would have stipulated to heaven knows how much
23 of their --

24 THE COURT: I understand all that. But that means
25 the fact that there are wedding pictures is what you are

1 arguing makes them relevant.

2 MR. SAMUEL: To show there was a wedding.

3 THE COURT: But all this witness can do since she
4 wasn't at the wedding, she doesn't know if those pictures
5 were taken when they went to a costume party.

6 MR. SADEQUEE: Well, if I may, Your Honor, these
7 chats and discussions were telling online people or people
8 are saying, discussing the idea of using a wedding as a cover
9 to travel.

10 THE COURT: I understand. You need to listen,
11 Mr. Sadequee. The question is the relevance of these
12 pictures.

13 You are arguing, and so is your lawyer -- who
14 although I shouldn't allow him to be, I'm trying to get over
15 this very late-breaking evidentiary issue which wouldn't have
16 been an issue if the defense had met their obligation to
17 timely provide reciprocal discovery. But I'm going to let
18 that go for now, as I have a number of other issues.

19 So the question is are the pictures relevant. You
20 are saying they are relevant to prove that there was a
21 wedding. This witness was not at the wedding and cannot say
22 when these pictures were taken.

23 So how is that probative that a wedding occurred?

24 MR. SADEQUEE: I believe the pictures and also the
25 video --

1 THE COURT: The video is excluded. You can't get
2 the video in because nobody can authenticate it. There is
3 nobody that you are going to call that can say I was there
4 and what I'm looking at now is a true and accurate depiction
5 of what I saw.

6 So the video is not admissible.

7 MR. SADEQUEE: She has been to a wedding -- the
8 place where my wedding took place is the same place where my
9 brother's wedding took place, and she did attend -- she knows
10 the locality.

11 THE COURT: That's irrelevant. What is the legal
12 issue here is whether somebody can take a piece of evidence
13 that you are trying to admit, whether under the Rules of
14 Evidence that I told you you were bound by in this case,
15 whether that's an admissible piece of evidence.

16 And you don't have a witness that can look at
17 either of these depictions for the purpose that you want to
18 introduce them, which is to establish that a wedding
19 occurred.

20 MR. SADEQUEE: I --

21 THE COURT: I get to finish.

22 And in the absence of that, that's not probative
23 evidence of a wedding. Because we don't know when these
24 pictures were taken. We don't know if they went to a play,
25 we don't know if somebody went to a costume store.

1 What you want to do is you want her to say,
2 I understand my brother -- that you got married, and that
3 looks like a place where I have been where other weddings
4 have happened, that looks like wedding attire, and so
5 therefore I conclude that that wedding must have taken place
6 even though I was never there.

7 And that's not -- that's not a proper standard for
8 the admission of evidence in a federal court.

9 MR. SADEQUEE: If I may just clarify about -- my
10 reasoning is this. That she can testify that this wedding --
11 that the place, the building, the center where our wedding
12 took place is the same place from the video --

13 THE COURT: I understand that. How is that
14 relevant to the issue of whether on the day that's depicted
15 in these pictures that your wedding occurred? She can't do
16 that because she wasn't there.

17 MR. SADEQUEE: I understand that. But she can
18 authenticate that everyone in the video is in a wedding -- is
19 in the center, it's called White Castle, and the very seat
20 that I was seated in is the very seat that my brother was
21 seated in when she actually did attend my brother's wedding.

22 THE COURT: How does that make the pictures
23 admissible?

24 MR. SADEQUEE: I think would that not be
25 authentication, the fact that she -- although she was not

1 present the very day I was getting married, she was present
2 at my brother's wedding, which is the same -- exact same
3 place, same room, same everything?

4 THE COURT: So your argument is because she's been
5 there before and that she knows where weddings take place and
6 she saw these pictures, it is likely that what she's looking
7 at was your wedding? Is that what you are saying she would
8 say?

9 MR. SADEQUEE: Together with the fact that she also
10 knows many of the people who are in the video.

11 THE COURT: I don't think that -- what you need is
12 you need somebody -- and the way that it needs to be done in
13 every court of law is that somebody has to come in and say
14 here is a picture, I was there, and this picture is an
15 accurate representation of that place because I am familiar
16 and was there at the place and this is what happened.

17 MR. SADEQUEE: But she was there but not on this
18 date.

19 THE COURT: Well, I know that. If she had been
20 there 25 years ago, that's not probative of whether what
21 happened on the day you claim happened happened.

22 I mean, you can talk to Mr. Samuel some more --
23 I mean, you have been doing it all day -- and get his
24 explanation legally. Since I don't think you understand
25 authentication, get him to explain to you authentication and

1 have him inform you whether or not, because he's an officer
2 of this court, he will have to tell accurately whether or not
3 you have met the requirements of the rule.

4 MR. SADEQUEE: I think, for example, if I may
5 compare it to the D.C. videos, the government had put up
6 witnesses asking is this D.C., is this this building, is this
7 that building.

8 THE COURT: There was no objection to that
9 evidence.

10 The question here is what is the law as it relates
11 to these pictures. That's where we begin.

12 MR. SADEQUEE: It's my understanding that the
13 government did not object to the wedding videos.

14 THE COURT: They have just done that. Of course,
15 they didn't know about it apparently until today.

16 Look, let's stop going through this
17 charade. Mr. Samuel, you are making this argument. All you
18 are doing is having him read things out of your book. You
19 address this so we can go on here.

20 Even though I will say, Mr. Sadequee, I told you
21 when this case started that this is very difficult, and you
22 told me that you understood that you would be bound by the
23 rules of the court and you told me that you understood that
24 you would have to abide by the Rules of Evidence.

25 And I told you and I have told you twice that I

1 would not allow hybrid representation. This is exactly the
2 reason why I didn't allow hybrid representation, because we
3 are about to waste a half an hour because you did two
4 things:

5 One is you decided on a strategy to allow -- to
6 tell the government for the first time moments before a
7 witness that you have exhibits, even though you and your
8 lawyer knew that discovery was required to be provided by you
9 a long time ago.

10 And then, second, you are not prepared to address
11 this issue as you were required to be prepared.

12 But I will now hear from Mr. Samuel, because we
13 need to go on with the case since we have had a jury now
14 waiting for almost 40 minutes to come back and continue
15 listening to testimony.

16 Mr. Samuel?

17 MR. SAMUEL: Your Honor, 901 has no hard and fast
18 rules that a person must be present when a picture was
19 taken.

20 I think the casing videos is a good comparison.
21 Whether objected to or not, I think the casing videos are
22 admissible because a witness who lives in Washington can say
23 I recognize that building, that's the Capitol. I recognize
24 all the HAZMAT trucks going by because there was a --

25 THE COURT: Yeah, I understand all that, but that's

1 because the relevance was obvious. Here -- and all you are
2 doing is you are saying, yes, I recognize that as a
3 historical landmark or a governmental building of great
4 historical importance.

5 It's a totally different issue where you are saying
6 that a particular event that you are relying upon and your
7 client is relying upon in this case actually occurred at a
8 particular place.

9 And you are asking, even you, if you will admit it,
10 are saying I want this witness to engage in a series of
11 deductions: That I have been to a place where other weddings
12 have happened, I see these people, I don't know that these
13 pictures are on a particular date, I don't know if that's the
14 actual ceremony, but it looks to me like it is, and it looks
15 to me like the people that would have attended my -- the
16 defendant's wedding, and that you want those logical series
17 of deductions, with the final deduction being, therefore,
18 I conclude that this picture fairly and accurately represents
19 the event that I believe happened.

20 Show me some authority for that.

21 MR. SAMUEL: Well, 901 doesn't say, first of all,
22 you must be present when a picture was taken any more than a
23 document to go into evidence the person has to be present
24 when it's written. He could recognize it.

25 THE COURT: Give me a case on this issue.

1 MR. SAMUEL: Well, you know, there is a case
2 called -- 901 (b) (4), the rule itself says that a party may
3 authenticate documents through appearances, contents,
4 substance, internal patterns or other distinctive
5 characteristics.

6 THE COURT: That's the rule; I want a case.
7 Because I don't believe that you will find an
8 Eleventh Circuit case that would allow this evidence in under
9 these circumstances. And that's what I want.

10 MR. SAMUEL: I can give you cases that cite that
11 rule. I am not sure -- I don't have the cases in front of me
12 right now, but I can give you cases --

13 THE COURT: Yeah, because you are burdened by the
14 same problem, which is you just found out about this evidence
15 because Mr. Sadequee chose not to share it with you.

16 MR. SAMUEL: I don't blame it on my client. But
17 I think the key issue here is that you can use circumstantial
18 evidence to authenticate a document. It does not direct
19 eyewitness account in order to authenticate a document.

20 Someone can take a picture of this courtroom right
21 now and someone who knows this courtroom and knows you and
22 knows me, knows actors, could later say, I recognize that
23 picture, I recognize that scene.

24 Now, it's possible they were engaged in a role play
25 or it's certainly conceivable, and they could cross-examine

1 the witness and say, Well, isn't it possible --

2 THE COURT: So do you believe, I mean --

3 MR. SAMUEL: I wouldn't be saying it if I didn't
4 believe it.

5 THE COURT: Do you believe if a picture is taken of
6 my courtroom -- that's a great example -- of my courtroom
7 where I have been listening to moot court arguments in the
8 past, that if somebody looked at a picture and saw me in my
9 robe and saw lawyers at tables could say this fairly and
10 accurately depicts a federal criminal proceeding in the
11 courtroom of Judge Duffey?

12 MR. SAMUEL: I do think they can say that. I think
13 a witness could say that. The witness could be
14 cross-examined, and Mr. McBurney could say, Well, how do you
15 know they weren't just doing a moot court, and the witness
16 would probably say, Well, I guess that's possible.

17 THE COURT: Mr. Samuel, you need to appear here
18 more often then.

19 I'll tell you, if you believe that's the law, we
20 are going to take a break, I'm going to do some independent
21 research.

22 The one thing that just chaps me more than anything
23 is to have these kinds of issues arise under these
24 circumstances. Because if I had even known this before
25 lunch, I would have done the research at lunch.

1 But instead I walk in here blindsided by a legal
2 issue in a criminal case, by you, by the government, and by
3 Mr. Sadequee. And the only people inconvenienced here are
4 the jurors, even though you all knew that this was an issue
5 and chose to wait until the eleventh hour for you even to
6 bring it to my attention.

7 And I don't know why that happened, but we are now
8 about to further inconvenience the jurors so that I can do
9 what I'm entrusted to do, is to try to make accurate rulings
10 based upon the right factual predicate.

11 But this apparently is important to the government
12 because they otherwise wouldn't have raised it. So we are
13 going to take a break, I'm going to do the research that
14 nobody else has done, and I will reach a conclusion as to
15 whether or not it's admissible.

16 MR. SAMUEL: May I point out, this is not our first
17 witness. The other witness is going to be first. I could
18 have somebody from my office doing some research during this
19 break here. There is only going to be two or three cases.

20 I think nobody is going to be able to say a
21 picture of a wedding, no case will say that, but I think we
22 will be able to help you before the witness gets on the
23 stand, before the break, the afternoon break, that a
24 picture can be authenticated by someone who can say, I can
25 identify that place, those people, without having said I was

1 there.

2 And I will commit to you to have that done before
3 the afternoon break. Our first witness will take, whatever,
4 45 minutes or an hour, and there is no exhibits with that
5 witness.

6 THE COURT: All right. I want the government to
7 send somebody down to their office and do the same thing.

8 Although, frankly, I don't know why this is such a
9 big issue. But if it is to you and you want to keep it out,
10 then we will do the legal research and I will make the
11 ruling.

12 All right. Now is there anything else?

13 MR. McBURNEY: No, sir.

14 THE COURT: All right. Bring the jurors back in,
15 please.

16 (In open court with a jury present:)

17 THE COURT: All right. Ladies and gentlemen, thank
18 you for coming back. I apologize for the delay.

19 I often take responsibility for the delays.
20 I won't take responsibility for this one, but I do only
21 because I think that we have violated our promise to you to
22 use your time efficiently and we have not this time. But we
23 are prepared to proceed with the case.

24 Before we do, you will recall that Exhibits 268,
25 269, 271 and 273, those were the four documents that were

1 received in evidence, and they were communications that were
2 shown to you on the screen, that those four documents had
3 portions that we call redacted, which is another way of
4 saying that they had portions that were deleted from your
5 view. You probably saw them as black boxes.

6 I just wanted to explain that to you. I was the
7 one that determined that the redactions in those documents be
8 made.

9 There are many reasons a part of a document may be
10 redacted and thus not received in evidence. For example, a
11 portion of an exhibit may contain irrelevant information that
12 I determine should not be admitted in the case.

13 You are not, though, to speculate or guess what
14 information was redacted or the reasons why it was
15 redacted. I'm simply instructing you that you should only
16 consider the information that was not redacted subject to the
17 same instructions which apply to other exhibits.

18 So with that, Mr. Sadequee, call your first
19 witness.

20 MR. SADEQUEE: The defense calls Mariam Ahmed.

21 THE COURT: I'm sorry, who?

22 MR. SADEQUEE: Mariam Ahmed.

23 THE COURT: If you will stand in the witness box, I
24 will have you sworn in.

25 -- -- --

1 MARIAM AHMED

2 being first duly affirmed by the Courtroom Deputy, testifies
3 and says as follows:

4 -- -- --

5 DIRECT EXAMINATION

6 BY MR. SADEQUEE:

7 Q. Good afternoon, Ms. Ahmed. Would you please state your
8 full name, and spell it?

9 A. Mariam Ahmed, M-a-r-i-a-m A-h-m-e-d.

10 Q. Can you state your relation to Mr. Syed Haris Ahmed?

11 A. I'm his older sister.

12 Q. Could you tell the jury how old he is today?

13 A. He is 25. He will be 26 in December.

14 Q. Are you married?

15 A. Yes.

16 Q. Could you state when you got married?

17 A. July 2004.

18 Q. And where do you presently live?

19 A. In Pakistan.

20 Q. Where in Pakistan?

21 A. Karachi.

22 Q. How often do you travel back and forth?

23 A. Since I have been married, I have traveled at least four
24 times.

25 Q. So since 2004 you have traveled back and forth to the

1 United States four times?

2 A. Yes, four times.

3 Q. Can you give us -- tell us a little bit about your
4 brother Haris Ahmed, just a brief overview?

5 A. Sure. I am older than him, three years older than him,
6 and we have always been very close. He's always been a very
7 caring, soft-natured --

8 MR. MCBURNEY: Objection.

9 THE COURT: Sustained.

10 Well, what's the relevance of this testimony?

11 MR. SADEQUEE: I will leave that.

12 THE COURT: All right.

13 BY MR. SADEQUEE:

14 Q. Can you tell us something about Haris's travels to
15 Pakistan?

16 A. Yes. We have always traveled in summer to see our
17 family, relatives. We went in 2000, me and just him. We
18 stayed there for the whole summer.

19 And then we went as the whole family in 2002.

20 It was my cousin's wedding.

21 And then 2004 for my wedding.

22 And then he came in 2005 to see me and my daughter, who
23 was born in 2005.

24 Q. He lived in Pakistan prior to coming to the
25 United States how long?

1 A. Excuse me?

2 Q. How long did he stay in Pakistan prior to coming to the
3 United States?

4 A. I didn't understand you.

5 Q. Prior to moving to the United States --

6 A. Oh, okay. He was twelve and half when he moved.

7 Q. So he had also friends as well; is that correct?

8 A. Yes.

9 Q. Where did Haris study over here?

10 A. When we moved here first, he went to East Cobb in a
11 school in Marietta, Georgia, for one year.

12 Then we moved to Roswell. He went to Centennial High
13 School for two years -- three years I mean.

14 And then we moved to Dawsonville.

15 Q. When he went -- what does your husband do in Pakistan?

16 A. He is a finance manager for Procter & Gamble.

17 Q. How many cousins does Haris have in Pakistan?

18 A. I can't number them, but we have a lot of cousins, close
19 family, extended family. We are very close with everybody.

20 Q. How long did he stay with you in 2004 when he went for
21 your wedding?

22 A. Me and my sister and my mom went to Pakistan before he
23 came. He came I think sometime in June, and then he stayed
24 till I think August, first week of August. I'm not sure
25 exactly.

1 Q. So about a month or two?

2 A. Yeah, a month or two.

3 Q. And then in 2005 how long did he stay?

4 A. For one month.

5 Q. So less than --

6 A. Yeah.

7 Q. To your memory, when he went to your wedding in 2004,
8 what were his activities in Pakistan? What was he doing in
9 Pakistan?

10 A. Well, he was helping my dad plan the wedding obviously,
11 getting the hall and the catering and everything else.

12 And then he was always with cousins, because he's very
13 popular among his age group, and we have a lot of cousins his
14 age. So he was always at least with either one of them,
15 whoever was there present. So he was always with them,
16 joking around and playing and everything.

17 Q. And when he went in 2005 to visit you --

18 A. Yeah.

19 Q. -- what was he doing in Pakistan?

20 A. The same thing. He went to see me -- he came to see
21 me. He stayed at my house at least one or two days, I think,
22 and then he would visit family, my uncles and my aunts, and
23 he was always with cousins.

24 Q. How close is he with his cousins?

25 A. He's very close with his cousins. In fact, for years

1 he's very close with them.

2 Q. When you say close, would you say something like his
3 best friends?

4 A. Yes.

5 Q. How long before him going to Pakistan did you learn of
6 him going to Pakistan, in 2005 I mean?

7 A. I think my mom called me maybe a few weeks before or
8 maybe a week or two before telling me that he's coming, and I
9 was very happy. And she said that he's coming to see me and
10 my daughter, he's very excited too.

11 Q. When was your daughter born?

12 A. June 2005.

13 Q. So -- and he came in July 2005?

14 A. July, yes.

15 Q. Okay. Haris, did he mention anything about Islamic
16 studies --

17 A. Yes.

18 Q. -- in relation to his travel?

19 A. When he came to stay with me, we had talks.

20 MR. McBURNEY: Objection, hearsay.

21 THE COURT: Sustained.

22 BY MR. SADEQUEE:

23 Q. Do you know if Haris was trying to advance in Islamic
24 studies?

25 A. Yes.

1 Q. Did you see him or observe him researching Islamic
2 studies in terms of universities, like formal Islamic
3 studies?

4 A. Yes, I always knew that he wanted to advance his Islamic
5 education, and he was pursuing that with asking my cousins
6 which college, which school should I attend, which is a good
7 one? He was always asking about opinions, which was right.

8 Q. Did he ever try to get enrolled in these Islamic schools
9 or universities?

10 A. Yes, he wanted to, but he actually didn't get to that
11 point, I don't think. He wanted to. He narrowed down some
12 schools.

13 Q. Did he ever show interest in memorizing the Quran?

14 A. Yes, he's always been trying to memorize the Quran. He
15 had memorized big sort of verses of the Quran, but he wanted
16 to complete the whole Quran, which could be done in an
17 Islamic school.

18 Q. Is that something that Muslims do?

19 A. Yes, very often.

20 Q. How -- you have watched your brother grow up. How is
21 his -- what's your observation of his adherence to Islamic --
22 is he religious?

23 A. Yes, he's always been very religious.

24 Q. And his cousins that he has, what's his relationship
25 with them in terms of are they also religious and are they --

1 what type of conversations --

2 A. Well --

3 Q. -- have you seen them or heard them have?

4 A. Well, I know for a fact that they are religious in terms
5 of they perform the duties, but not to the extent that when
6 Haris was -- there is some that he was very close with about
7 talking about, you know, memorizing the Quran, learning other
8 things, the Hadiths, the Prophet Mohammed's -- sallallahu
9 aleyhi wasallam -- way of life. He had close contacts about
10 this with some cousins.

11 Q. In 2004 and 2005 when he visited Pakistan, did he sleep
12 overnight elsewhere other than your own home?

13 A. Yeah, yeah. I mean, mostly he was with my cousins, my
14 uncles and my aunts. He hardly stayed with me because I live
15 with my extended family.

16 Q. You mean your husband's family?

17 A. Yes.

18 Q. So he would stay with his own cousins?

19 A. Yes.

20 Q. Is that something which is abnormal or is that something
21 that Muslims, it's common to do?

22 A. No, it's not abnormal, because we always used to spend
23 nights at my uncle's house or cousin's house. It's been a
24 tradition, a normal thing for us.

25 Q. Now, how often, if he did not stay at your house, would

1 you have contact with him or see him while he's staying over
2 elsewhere, at his cousin's or his uncle's?

3 A. I think I would see him a couple times a week.
4 Sometimes he would come over, sometimes I would go see him.
5 And usually at least once a day he would call me on the phone
6 and I would call him, where are you, what are you doing and
7 all that.

8 Q. Now, is your entire family and Haris's cousins all in
9 Karachi?

10 A. No. We have cousins in Lahore, in Islamabad and in
11 other cities.

12 Q. Now, in 2005 did he go to visit any of those cousins?

13 A. No. He was in Karachi that time.

14 Q. Did he ever mention to you about joining any kind of
15 terrorist organization while he was over there?

16 A. No, never.

17 Q. Did he mention to you that he wanted to go to a training
18 camp for some type of military work while he was there?

19 A. No. I never had that discussion with him.

20 Q. Did he ever carry any weapons?

21 A. No.

22 Q. In Pakistan, since you live over there -- how long have
23 you been living over there, I forget?

24 A. Since I have been married in 2004.

25 Q. So about five years?

1 A. Yes.

2 Q. So -- and you have also lived there when you were
3 growing up?

4 A. Yes.

5 Q. How much have you traveled across Pakistan in whole?

6 A. I have been to Lahore, Islamabad, there have been a few
7 cities I have been to.

8 Q. So how easy is the access to weapons or getting into --
9 if someone wants to join the Taliban or go to Kashmir, is
10 that easy or hard?

11 A. It's very easy, fairly. If you want to, you can just
12 kind of go look around and you would find something.

13 Q. Do you know why he did not attend -- he did not attend
14 any Islamic school?

15 A. Well, because he was convinced to go back and finish his
16 studies first and then come back and reenroll in Islamic
17 school, which takes more than a couple of years to finish.

18 Q. So in essence during the month's stay that he stayed in
19 Pakistan, he spoke to --

20 A. Yes, he spoke to my cousins and some scholars, and they
21 told him to go back and finish his studies and then come
22 back.

23 Q. His studies at Georgia Tech you mean?

24 A. Yes, Georgia Tech.

25 Q. Could you tell us, is it normal for people who live in

1 the United States, Pakistanis who live in the United States
2 to go back to the Pakistan in the summer?

3 A. No, it's actually common because you get more time to
4 spend there with your family and friends. Usually everybody
5 travels in summertime.

6 Q. How is the school year in Pakistan? When is the big
7 break? Like over here there is summer break is the big
8 yearly annual break. How is it in Pakistan?

9 A. It's the same. You have a very long big summer
10 vacations.

11 Q. So all his cousins also are on their summer break?

12 A. Yes.

13 Q. You mentioned that Haris is popular amongst his
14 cousins. What do you mean by that?

15 A. Well, because he's very easy to talk to, very friendly,
16 and a very fun-loving, joking kind of guy.

17 Q. Have you ever seen in Pakistan any of these, I mean,
18 what's called jihadi conventions such as LeT holds with
19 posters all over?

20 A. I have not seen it, but they would probably be there.
21 But I have not witnessed this.

22 Q. Did he ever discuss with you his intentions of getting
23 married to anyone?

24 A. He would joke around about getting married, but I'm not
25 sure he actually wanted to get married so soon.

1 Q. Okay. So what, other than talking to his sort of
2 scholars that you mentioned who told him to come back, did he
3 talk with anyone else who told him to come back to the
4 United States?

5 A. Yes. It was my cousin Kamran, he's a very close friend
6 of -- he's like a brother to us, older brother, and Haris
7 actually looks up to him. So he told him, and one of his
8 friends who is also a scholar, he told him to finish his
9 studies and then come back.

10 MR. SADEQUEE: That would be all. Thank you.

11 THE COURT: All right. Mr. McBurney?

12 MR. MCBURNEY: Thank you, Judge.

13 -- -- --

14 CROSS-EXAMINATION

15 BY MR. MCBURNEY:

16 Q. Ms. Ahmed, did I understand your testimony correctly
17 that you only learned of your brother's intention to visit
18 Pakistan in the summer of 2005 just a couple weeks before he
19 came over?

20 A. Uh-huh, yes.

21 Q. We have met before; yes?

22 A. Yes.

23 Q. I have had the opportunity of asking you questions
24 before?

25 A. Yes.

1 Q. I think you told me before, Karachi is a very large
2 city; is that right?

3 A. Yes.

4 Q. When your brother was there in the summer of 2005 --
5 maybe other summers as well, but in particular 2005 -- he
6 didn't stay with you and your husband and his extended family
7 for many of the days that he was there?

8 A. That's correct.

9 Q. He bounced around from cousin to cousin and to relative?

10 A. Yes.

11 Q. Sometimes those relatives lived very near to your home,
12 and sometimes they lived ten, fifteen miles away. Is that
13 right?

14 A. Yes.

15 Q. So while you kept in touch with him perhaps almost daily
16 by phone or e-mail, you didn't necessarily see him
17 twenty-four hours day, seven days a week, for the month he
18 was there?

19 A. Yeah, that's correct.

20 Q. Have you ever been to Wana?

21 A. No.

22 Q. Have you ever been to Waziristan?

23 A. No.

24 Q. Any of the northwest frontier provinces?

25 A. Well, northwest? No, I don't think so. I have been to

1 the northern areas, but I don't know the cities included in
2 that.

3 Q. You mentioned on direct examination in response to a
4 question from Mr. Sadequee that it's pretty easy to get into
5 a training camp if you want. Did you ever try?

6 A. No.

7 Q. Any of these many cousins that you have described you
8 have and your brother has, is that something they tend to do?

9 A. No.

10 Q. When your brother was interviewed by Customs and Border
11 people when he returned from this trip we have been talking
12 about, summer of 2005, he told the folks interviewing him
13 that he had gone to Canada that same year in March, March
14 2005, to visit an uncle of yours named Azdee Omani.

15 Do you have an uncle named Azdee Omani?

16 A. No, I don't.

17 Q. While your brother was in Karachi in the summer of 2005,
18 he met with and spent almost half a day with Aabid Hussein
19 Khan. Do you know that person?

20 A. No.

21 Q. Did you ever hear your brother talk about him?

22 A. No.

23 Q. Ever hear your brother talk about Abe Umar or Abu Umar,
24 that being the same person?

25 A. No.

1 Q. When we talked before, you described some of the e-mail
2 addresses that you know your brother to use. Piddikashorba?

3 A. Yes.

4 Q. Thandy Mazaq?

5 A. Yes.

6 Q. Those are up there on page three of Government's
7 Exhibit 1. Thandy Mazaq, Piddikashorba.

8 A name your brother used when he was having
9 conversations of a particular nature was Aboo Turaab
10 al-Qurashee. Are you familiar with that name?

11 A. No.

12 Q. Is that a name your brother ever shared with you?

13 A. Well, I can't recall actually, but it seems like I have
14 heard this name. But I don't remember when he told me or
15 what. Maybe it's like a nickname. I can't remember actually
16 when he told me that, though.

17 Q. But it's not a name with which he would correspond with
18 you?

19 A. No.

20 Q. He would be Haris or brother or Thandy Mazak or
21 Piddikashorba?

22 A. Yes.

23 Q. And finally there is one Dannymoore1126. Is that an
24 e-mail address he ever used with you?

25 A. No.

1 MR. MCBURNEY: All right. Give me one second.

2 BY MR. MCBURNEY:

3 Q. The defendant, Ehsanul Sadequee, was a friend of your
4 brother's. Had you met Ehsanul Sadequee before today?

5 A. No.

6 THE COURT: Does that mean you are done?

7 MR. MCBURNEY: Thank you, yes.

8 THE COURT: I'm always the last to know.

9 Any redirect?

10 MR. SADEQUEE: Just one.

11 -- -- --

12 REDIRECT EXAMINATION

13 BY MR. SADEQUEE:

14 Q. Haris reads a lot of books?

15 A. Yes.

16 Q. Okay. Has he ever shared with you what literature he
17 read, Islamic books?

18 A. Since I was married for the last five years, so I'm not
19 really -- we only talk on the phone or e-mail, so we don't
20 really discuss a lot of it. But whenever I visited him,
21 yeah, he actually talked about he read this. Or something in
22 general, he would read a lot of magazines other than Islamic
23 books, like *Reader's Digest*, *National Geographic*, other
24 things.

25 Q. What about with his cousins, did you ever see him or

1 hear him conversating about literature that he reads?

2 A. Yeah, they talk a lot about it, discuss what they
3 read. One of my cousins, Kamran, also reads a lot of books,
4 so they talk about reading.

5 Q. You mentioned one of your cousins is a scholar?

6 A. No, he's not a scholar. He is just someone he looks up
7 to, Kamran.

8 MR. SADEQUEE: Okay. That's all.

9 THE COURT: Does anybody want Ms. Ahmed subject to
10 recall?

11 MR. McBURNEY: No, sir.

12 THE COURT: Mr. Sadequee?

13 MR. SADEQUEE: No.

14 THE COURT: We have finished your
15 testimony. Please do not discuss your testimony with anybody
16 until you hear the case has been concluded. Thank you for
17 being with us.

18 THE WITNESS: Thank you.

19 MR. SADEQUEE: Defense calls Sonali Sadequee.

20 MR. McBURNEY: Judge, we have discussed with
21 defense counsel, and I think we have sorted things out.
22 Thank you.

23 THE COURT: All right. Can someone get
24 Ms. Sadequee?

25 AGENT WILZ: She's in the restroom.

1 THE COURT: We would call that in my house
2 oversharing.

3 You might want to read the *United States v.*
4 *Patterson*, 277 F 3d 709, a 2002 case of the Fourth Circuit,
5 and *Shahid v. City of Detroit*, 889 F 2d 1543, a Sixth Circuit
6 case, just on the subject we talked about earlier while we
7 are waiting for the witness.

8 Ms. Sadequee, if you will come forward and stand in
9 the witness box, I will have you sworn in.

10 -- -- --

11 SHARANIKA SONALI SADEQUEE
12 being first duly affirmed by the Courtroom Deputy, testifies
13 and says as follows:

14 -- -- --

15 DIRECT EXAMINATION

16 BY MR. SADEQUEE:

17 Q. Good afternoon.

18 A. Good afternoon. Salaam.

19 Q. Could you please state your name and spell it?

20 A. Yeah. My name is Sharanika Sonali Sadequee,
21 S-h-a-r-a-n-i-k-a, Sonali, S-o-n-a-l-i, and Sadequee,
22 S-a-d-e-q-u-e-e.

23 Q. Could you tell the jury your relationship to me?

24 A. Sure. Shifa, I'm his immediate older sister and one of
25 my favorite people in the world.

1 Q. I didn't hear the last part?

2 A. You're just one of my favorite people in the world.

3 Q. Of course.

4 Could you tell us about briefly our family, parents,
5 what they do, siblings, what they do?

6 A. Sure. So we have four siblings in the family. Shifa
7 and I have an older brother and an older sister. I'm the
8 middle and Shifa is the youngest. And our mom is here in
9 Atlanta and our dad is in Bangladesh.

10 Q. What do you do?

11 A. Right now I do a few different things. So I work with
12 the multiple community organizations working for social
13 justice and human rights issues here in Atlanta and
14 nationally as well. And then I also do a lot of nutrition
15 and wellness coaching for individual clients and also
16 corporate clients. And then I also do marketing for multiple
17 different marketing agencies here in Atlanta but then also
18 nationally.

19 Q. What about your studies?

20 A. Sure, okay. I have my B.A. from Georgia State
21 University, and after that I served a national fellowship,
22 National New Voices Fellowship offered by the Ford Foundation
23 and Academy for Educational Development in serving the
24 Atlanta community here working closely with the South Asian
25 community around human rights, social justice and violence

1 against women.

2 And then after my fellowship, I went into my nutrition
3 coaching/counseling practice, and received my certification
4 from Institute for Integrated Nutrition in Manhattan and the
5 Teachers College of Columbia University.

6 And let's see, what else?

7 Q. That's --

8 A. That's good, okay. I have a whole bunch of other stuff,
9 but --

10 THE COURT: Could you back up just a bit from the
11 microphone. It picks you up --

12 THE WITNESS: Is this good?

13 THE COURT: A little closer. Just don't get so
14 close when you speak into it.

15 THE WITNESS: Is that good? Can you hear me?

16 THE COURT: Yes.

17 THE WITNESS: Okay.

18 BY MR. SADEQUEE:

19 Q. Can you tell us about our other siblings and their
20 educational background?

21 A. Yeah.

22 Q. And my education?

23 A. Sure. So our older sister, Sharmin Sadequee, is a
24 doctorate student in Michigan where she is studying
25 sociocultural anthropology and studying specifically the

1 effect of 9/11 on the Muslim community and the impact that
2 has had on the Muslim community and the greater community in
3 this country.

4 And then my -- our older brother, Amimul Sadequee, is a
5 graduate of Georgia State University, studied business, and
6 is now doing a nine-to-five job at a computer firm here in
7 Atlanta.

8 And Shifa, you went to school in Ajax, Toronto, for a
9 couple of years, and then went to go live with our mom and
10 dad in Bangladesh where you studied at a university there and
11 then also home-schooled there.

12 And then you came back here to resume your studies here
13 in the U.S. where you studied for your SATs, your GEDs. You
14 did really good, you taught yourself.

15 So, yeah, that's where your studies ended.

16 Q. Now, you mentioned I studied in Ajax, Toronto, Canada?

17 A. Uh-huh.

18 Q. How long did I study over there?

19 A. You were there for a few years. A couple years at
20 least.

21 Q. Have you ever -- you visited Toronto before?

22 A. Yeah, I visited our aunt there, who lives there. At
23 least she did at that time.

24 Q. Can you tell -- you mentioned also that I got my
25 GED. Could you state how -- everything that you know about

1 me and the GED and SATs and how --

2 A. Sure, sure. So in about when, you know, you came back
3 here with me in 2004, you wanted to resume your studies and
4 you -- because, you know, you had studied in Canada, you
5 studied in Bangladesh, you didn't have the American system
6 educational credentials.

7 So in order for you to resume your studies actually here
8 in the U.S. and in Atlanta, you had to get your SATs
9 completed and your GED scores so that you could actually
10 enroll in a university here.

11 So you studied, gosh, almost all day long for many days
12 so you could take your SATs. So you took your SATs.
13 Actually I was the one that took you over to the SAT office,
14 signed you up for the actual examination and all of the
15 logistics around that in Marietta, which was the closest
16 office to where we lived at that time.

17 And then, you know, you took your SATs, and got good
18 scores.

19 MR. SADEQUEE: I would like to ask the witness if
20 she recognizes these exhibits. I would like to tender --

21 THE COURT: What exhibits?

22 MR. SADEQUEE: There is Exhibits 10 to 22.

23 THE COURT: I mean, where are they physically?
24 Right here?

25 Would you give those to the witness?

1 THE COURT SECURITY OFFICER: 10 through 22.

2 THE CLERK: There are sticky notes on the exhibits.

3 THE COURT: One second. Let me see those.

4 There are some Post-it notes on these

5 exhibits. Should I take those off?

6 MR. SAMUEL: (Nods head.)

7 BY MR. SADEQUEE:

8 Q. Can you review these and see if you know what these are?

9 A. You want me to review them and tell you --

10 Q. For example, we were talking about the SATs and

11 GED. I think you will find it there.

12 A. Sure, okay. So these are your university from

13 Bangladesh -- so right here, this is the one you got from the

14 GED scores.

15 Can you guys hear me?

16 Q. I can hear you.

17 A. So, yeah, this is -- the one is the GED letter of

18 congratulations. This is your scores.

19 No, this is your SAT score right here, and this is your

20 GED congrats letter.

21 I think this is -- yeah.

22 THE COURT: We probably need more discipline in

23 this because she's generally describing and publishing the

24 contents of the letters. None of these documents have been

25 admitted yet.

1 So you need to have them identified, and then you
2 have to move for their admission. And then if there are any
3 objections, I have to rule on the objections before I can
4 decide whether they are admitted or not.

5 MR. SADEQUEE: Yeah, I would like to have Exhibits
6 10 through 22 tendered into evidence.

7 THE COURT: Any objection?

8 MR. BLY: No, Your Honor.

9 THE COURT: They are admitted.

10 THE WITNESS: You said 10 to --

11 MR. SADEQUEE: 22.

12 THE WITNESS: Okay. So I mean -- this is it.

13 BY MR. SADEQUEE:

14 Q. Do you recognize these items?

15 A. Yeah, uh-huh.

16 Q. You are familiar with them?

17 A. Yeah.

18 Q. If we could go over some of these?

19 MR. SAMUEL: Your Honor, can the ELMO be turned on?

20 BY MR. SADEQUEE:

21 Q. While she's doing that, let me ask, you came to
22 Bangladesh in 2004; correct?

23 A. Yes. That was the last time I was there, yes.

24 Q. What was the purpose of your visit then?

25 A. Well, our older brother was getting married at the time,

1 and so I wanted to be there for his wedding.

2 Q. Can you speak up a little bit?

3 So in 2004, how long was your stay in Bangladesh?

4 A. Oh, several weeks. I think about a month, month and a
5 half or so.

6 Q. Do you know -- you went shopping in relation to my
7 brother's wedding?

8 A. Yeah, we did shopping almost, if not every weekend, it
9 felt like every other day.

10 Q. How is it -- how is it --

11 A. It's pretty exhausting. Shopping you mean for the
12 wedding? Oh, my gosh, yeah, it's pretty exhausting. There
13 is so much -- so much stuff that you have to do.

14 Q. Could you tell us about how weddings are in Bangladesh,
15 and then compare it to weddings over here in the States in
16 the western culture?

17 A. For one thing, weddings, they are very elaborate, and
18 for both sides of the family it's very expensive. There is
19 gatherings, receptions, like ceremonies and rituals for
20 several days in a row.

21 And everybody in the family or extended family, friends,
22 they all gather at different times for participating at
23 different ceremonies and different rituals.

24 And everybody is helping each other out. And that's
25 really, it's just wonderful to watch all these family members

1 that you haven't seen in many months or even sometimes years
2 come together, because it's such a big deal to support and
3 bless the couple.

4 There is food -- oh, my gosh, the food is incredible.

5 Q. Can you tell us about how are the expenses in a wedding,
6 a typical wedding, or the wedding that you have attended, our
7 older brother's wedding?

8 MR. BLY: I would object to the relevance of the
9 brother's wedding.

10 THE COURT: Sustained.

11 A. It's pretty expensive.

12 THE COURT: Sorry, I sustained the objection.

13 THE WITNESS: Oh, okay.

14 BY MR. SADEQUEE:

15 Q. If we could put up -- if you could read No. 16, Exhibit
16 No. 16, if I could ask --

17 THE COURT: Jessica?

18 BY MR. SADEQUEE:

19 Q. Could you tell us -- you were with me -- you helped me
20 get a bank account; correct?

21 A. Uh-huh.

22 Q. Could you explain that as well, how --

23 A. Yeah. Well, you wanted to save up money so you could go
24 and marry Happy, and, you know, it was like you really didn't
25 know much how to do anything, so I had to show you how to do

1 a bunch of stuff, including like how to open up a bank
2 account.

3 So I took you to our nearby Bank of America and made
4 sure you brought your ID and just helped you sign up for the
5 account.

6 Q. Do you see Exhibit No. 22?

7 A. Uh-huh, right here.

8 Q. What is that?

9 A. This is your Bank of America statement.

10 Q. Could you read how much money I had when I -- or I took
11 out when I went to Bangladesh?

12 A. Okay. So in here, 7-19-05, you have about four thousand
13 dollars.

14 Q. Could you read the exact amount?

15 A. Sure, \$3,950.01 is your beginning balance.

16 Q. And that was withdrawn on --

17 A. So --

18 Q. -- July 19th did you say?

19 A. That was your beginning balance here, this statement
20 indicates.

21 Now, let me see. So on 8-17, you had taken out
22 \$3,851.96.

23 Q. So is that all the money from the documents?

24 A. It looks like it's all the money, other than some fees
25 that you accrued that probably took away some of the

1 remainder difference.

2 Q. So if we may now go into Exhibit 16?

3 A. Okay, it's right here.

4 THE COURT: Mr. Samuel, could you help him,
5 please?

6 MR. SAMUEL: You want an honest answer?

7 THE COURT: Your face said it all.

8 MR. SAMUEL: I'm not an expert on this.

9 THE COURT: Thank you.

10 BY MR. SADEQUEE:

11 Q. Could you tell us, you see this name right here?

12 A. Narayangonj, yeah.

13 Q. Above that.

14 A. Oh, that's Happy's name.

15 Q. And that's who?

16 A. That's your wife.

17 Q. And you know her?

18 A. Yes, of course.

19 Q. You met her?

20 A. Yes.

21 Q. And could you give us -- explain what this document is a
22 little bit?

23 Let me just go over stuff. These are -- are these
24 wedding items?

25 A. Yeah, they look like they are jewelry. It's earrings,

1 necklace, and then different -- the other ones are very
2 specific wedding type of jewelry, special wedding jewelry,
3 like the choor and tikli.

4 Q. What is a choor?

5 A. Choor is the one that goes from here to your nose, and
6 the tikli is this one that you wear.

7 Q. And kaan taana?

8 A. Kaan taana, I think that is -- is that maybe the one --
9 if you can translate that in English, I might know.

10 Q. Well, actually --

11 A. I'm not familiar with that piece of jewelry.

12 Q. I cannot answer the questions.

13 A. Okay.

14 Q. So do you know, could you estimate --

15 THE COURT: Mr. Sadequee, I can't hear you because
16 you are away from the microphone.

17 A. Oh, you know, I believe the kaan taana is the other
18 piece, it's the one you wear in your hair. Because there is
19 another piece that you wear, it kind of dangles down in your
20 hair, yeah.

21 Q. If you could -- there is pictures; right? Can you go
22 over the pictures, Exhibit No. I believe 20?

23 A. Uh-huh. Yeah, I have seen these.

24 Q. Do you notice some of the jewelry that you talked about
25 in there?

1 A. There it is, yes.

2 Okay. So that's -- it's very bride-specific jewelry.

3 Q. For the record, if you could just sort of --

4 A. Sure.

5 Q. I will put it right here so that you could just explain
6 it.

7 A. Take this one, because this one actually has the jewelry
8 bigger.

9 Okay. So the tikli or the one that you put in the --

10 Q. Can you identify the person?

11 A. Sure. That's Happy Shahnaz, that's your wife.

12 Q. So could you identify some of the jewelry which we saw?

13 A. Yeah, yeah. So the jewelry is made of gold and lots of
14 other semi-precious stones. The one that is on top of her
15 head, like it's going down in front of her forehead, that's
16 the tikli.

17 The one that I just said, kaan taana, is the one that's
18 hanging on the hair and it drapes down right by the side.

19 And then the other piece is the choor, which goes from
20 the ear to the nose.

21 And then, of course, you have the earrings, and then the
22 big necklaces that are very specific to bridal jewelry.

23 Q. And that's --

24 A. That's --

25 Q. Is there more jewelry visible? The necklaces; correct?

1 A. Well, she's wearing probably three different necklaces
2 made of gold and semi-precious stones.

3 Q. You can read Bangla; correct?

4 A. Very slowly.

5 You know what else is there that's not showing in this
6 picture is probably her rings. She has some bridal rings
7 that usually most brides wear.

8 Q. Can you read -- some of this is Bangla, so could you
9 read what diamond is sold?

10 A. I'm having trouble seeing that one, so I'm going to look
11 in here.

12 Q. That should be in Exhibit 16.

13 A. Okay. So can you point at what it is that you would
14 like me to read?

15 Q. This item right here.

16 A. Okay. So this means one, so ring basically, and it's
17 the type of ring it is, that's what it is describing.

18 Q. Could you read the price?

19 A. The price in the bottom, in the corner, in the bottom
20 corner right there, yeah, so that one says thirty-nine
21 thousand -- or thirty-nine hundred, sorry, Dhaka, which is
22 the Bengali currency.

23 Q. Can you approximately say how much that is equivalent to
24 in dollars?

25 A. Actually, sorry, it's thirty-seven, it's thirty-seven

1 hundred.

2 Gosh, now?

3 Q. We can get back to the calculations later.

4 A. I need to convert.

5 Q. We will be able to do that later. It might not be
6 necessary right now.

7 Could you read what these items are? I believe it's
8 somewhere in that packet.

9 A. So these are describing the specific jewelry pieces and
10 the different types of jewelry, and so it's basically
11 describing how much, you know, how much gold and then how
12 much of the semi-precious stones.

13 And all together, basically it's saying there is about
14 eighty-one thousand Dhakas that were invested in the gold,
15 and then about nineteen hundred in the -- no, that's the
16 taxes, sorry.

17 So all together it's about, about ninety thousand
18 dollars -- I mean, Dhakas.

19 Q. So when you went in 2004 to Bangladesh for my brother's
20 wedding, did you meet Happy?

21 A. Yeah, totally. I met with her several times.

22 Q. Did she come over to our house?

23 A. Yes.

24 Q. When did you find out that I was going to get married or
25 that I had intentions of getting married?

1 A. When you were here, before you left to go to Bangladesh.

2 Q. In 2004 when Happy came to our house, what was the
3 relationship between our father and her father?

4 A. Well, the fathers had all our life, always had some
5 family feud, you know, disagreements with each other.

6 Q. At that point in time in 2004 when you were in
7 Bangladesh, did our father's -- my uncle's side, meaning
8 Happy's father's, come to our brother's wedding?

9 A. Yeah.

10 Q. Did anyone from our father's side --

11 A. Our father's?

12 Q. -- yes, come to my brother's wedding?

13 A. If our dad and our dad's side of the family? You mean
14 our paternal side of the family, if they came to Amimul's
15 wedding? Is that what you are asking?

16 Q. Yes.

17 A. Yeah, they were.

18 Q. Did Happy come to our brother's wedding?

19 A. I believe so.

20 Q. Do you recall that 100 percent, are you sure, or you are
21 not --

22 A. There were a lot of, a lot of people who came.

23 Q. If you don't recall, then you don't recall.

24 What was the relationship between our father and Happy's
25 father in 2004 when you came to Bangladesh, briefly?

1 A. If I remember, it was off and on. There were --
2 I remember seeing them talk to each other.

3 Q. Did you ever see Happy's father while you were in
4 Bangladesh?

5 A. Yes, I did.

6 Q. Where did you see him?

7 A. He came over.

8 Q. On the 2004 trip?

9 A. Yeah, he came over to our house once, but dad wasn't
10 there. He came to see us, Amimul and I, because we were
11 visiting.

12 Q. You are saying Happy's father came over to our house in
13 2004?

14 A. Well, I don't recall clearly. I do recall -- I do
15 recall seeing him. I'm not sure if it was at our house or it
16 was within their house. There were lots of, lots of other
17 relatives that I was meeting with.

18 Q. In 2004 you visited Bangladesh, did you go to Portula
19 (sp.)?

20 A. I went to Portula at least once.

21 Q. In 2004?

22 A. Uh-huh, yes.

23 Q. What is Portula, can you explain?
24

25

* (sp.) Indicates phonetic spelling.

1

2 A. That's our dad's -- our dad's town where a lot of his
3 family and extended family lives.

4 Q. And when did you -- or when did I tell you that I was
5 going to get married, at what point in time?

6 A. Several years ago. You told me -- definitely 2004
7 I knew that you were going to go get married and you liked
8 Happy. And it was like 2003, 2004, around that time that you
9 actually communicated you were actually going to get married.

10 Q. When did I tell Aparna, meaning our boss at Raksha, when
11 did I tell her that I would be going back to Bangladesh, at
12 what point in time?

13 MR. BLY: Objection, Your Honor. Hearsay.

14 THE COURT: Sustained.

15 BY MR. SADEQUEE:

16 Q. Did I -- did you ever see me with paintball guns at the
17 house, paintball -- whatever it's called, paintball guns?

18 A. I know you played around and had sports and --

19 Q. Did you ever see me with paintball guns at the house?
20 Did I --

21 A. I think they are plastic, plastic toys. I don't know
22 what kind of a specific --

23 Q. You saw me with something; correct?

24 A. Uh-huh, yeah.

25 Q. Did I ever -- do you recall me talking to you about

1 going to the woods?

2 A. Yeah.

3 Q. Did I describe to you our -- my, Haris's, the experience
4 in the woods?

5 MR. BLY: Objection, Your Honor. Hearsay.

6 BY MR. SADEQUEE:

7 Q. Did I ever invite you to come to the woods?

8 A. Yeah, you did. You invited my friends too.

9 Q. Could you repeat that?

10 A. I said you invited my friends too.

11 Q. Could you elaborate on that?

12 A. Sure. I remember I think you and I were talking just
13 briefly one day, and you said -- you know, you said you were
14 going to go to the woods.

15 I said, I want to go to the woods too, you know, go to
16 the park and hang out, hang out with you and Haris. And I
17 was like cool, maybe I could bring my friends too.

18 I think you actually offered, Hey, you can bring your
19 friends too.

20 We were actually supposed to go kayaking one time too.

21 Q. Was there -- have we actually been to the woods together
22 before, not -- any woods?

23 A. You mean with you, or with you and Haris?

24 Q. No, with me.

25 A. With you?

1 Q. And your friends.

2 A. We hung out at lots of places together. Did we go to a
3 park together?

4 I don't recall going to a park, but I know we hung out a
5 whole bunch of other places.

6 Q. Do you recall us going swimming?

7 A. You mean --

8 Q. Not in the river, not in the woods, but in swimming
9 suits?

10 A. At a swimming pool? I don't recall going swimming.

11 Q. You don't recall going swimming?

12 A. No.

13 Q. Do you recall -- we lived in Harmony Bay; correct?

14 A. Yes.

15 Q. Harmony Bay?

16 A. Uh-huh.

17 Q. Does that have a swimming pool or in the apartment
18 complex next to it?

19 A. Oh, yes.

20 Q. Did we ever go swimming there?

21 A. I know we talked about going. I don't recall actually
22 going.

23 Q. Do you recall any of your friends named Sari?

24 A. Yeah. Yeah, you and Sari were really good friends.

25 Q. Do you recall us going swimming?

1 MR. BLY: I'm going to object. The question has
2 been answered several times.

3 THE COURT: Sustained.

4 BY MR. SADEQUEE:

5 Q. So you mentioned earlier that I had offered or I had
6 brought up the idea of going to the woods with your friends?

7 A. Uh-huh.

8 Q. Do you recall what my -- what you observed of my -- of
9 my attitude towards recreational activities, such as going to
10 the woods and -- what do you recall?

11 A. Well, you liked being in the park and spending time with
12 nature. You enjoyed being out and about, having fun, playing
13 and hanging out with friends.

14 Like I said, I really -- I was looking forward to having
15 some time to go kayaking with you.

16 Q. Now, a bit about our family. We come from a South Asian
17 family. Can you explain growing up, how were our parents,
18 especially in relation to us all, but to me as well, in terms
19 of spending a night in other people's or our friends' houses,
20 or just freedom of travel? What was our relationship with
21 our friends with regards to that?

22 Do you understand the question?

23 A. Let me make sure. You are asking like what did our
24 parents feel about us spending the night with our friends?

25 Q. Yes.

1 A. Well, it is a little different, you know, for me
2 because --

3 Q. In relation to me.

4 A. Okay. Well, I mean, if we are hanging out together,
5 they were totally fine.

6 For you, you know, they were protective at times. And
7 then at times, as long as, you know, it was like they knew
8 the parents --

9 Q. Has our father ever allowed us to spend the night over
10 any of our friends' house?

11 A. Not usually, huh-uh.

12 MR. BLY: Objection, relevance.

13 MR. SADEQUEE: I'm getting to it.

14 THE COURT: What is the relevance?

15 MR. SADEQUEE: My next question makes it --

16 THE COURT: Well, you need to explain to me what
17 the relevance is.

18 MR. SADEQUEE: That in that period of time in two
19 thousand -- end of 2004, this was the first time that I was
20 in Atlanta not under the supervision of my mom and dad, and
21 this was -- I got an opportunity to actually go out and do
22 whatever activities with my friends.

23 THE COURT: How is that relevant to any issue in
24 the case?

25 MR. SADEQUEE: Well --

1 THE COURT: Go ahead. Go ahead.

2 BY MR. SADEQUEE:

3 Q. I just said it, so --

4 A. Well, dad was usually protective. He didn't allow, he
5 didn't approve of you or anybody, any of us really growing up
6 staying with our friends. He pretty much prohibited us from
7 spending the night with our friends.

8 Q. So where was our father and our parents during 2004,
9 2005?

10 A. Both our mom and dad were in Bangladesh.

11 Q. So -- do you see Exhibit No. 21?

12 A. You said 21?

13 Q. Yes.

14 A. Uh-huh.

15 Q. Do you recognize this?

16 A. Yeah. This is one of the books that you gave me to read
17 a long, long time ago.

18 Q. Do you recall when, around what time?

19 A. It was 2004ish, yeah.

20 Q. Do you recall the publication's name?

21 A. Uh-huh. At-Tibyan.

22 Q. Did you ever read this book?

23 A. I looked at it, I glanced at it. I didn't read it cover
24 to cover.

25 Q. Do you recall what I mentioned about this book?

1 A. Yeah. You said that I might enjoy reading it and there
2 is a lot of good information there and Hadiths and
3 information on just religious information.

4 Q. What type of topics or range of topics did we -- we used
5 to discuss?

6 MR. BLY: Objection, Your Honor. I think the
7 witness testified she did not read the book, so I would
8 object on foundation grounds.

9 THE COURT: My understanding was your question is
10 that over your lifetime, you want to know all the things, the
11 kinds of things that you discussed? Is that what you are
12 saying?

13 MR. SADEQUEE: No, I'm saying, for example --

14 THE COURT: Or are you limiting it to that
15 publication, which is the exhibit that you just referred to?

16 MR. SADEQUEE: Well --

17 THE COURT: Ask your question again. It's
18 obviously not clear to me, so I can't rule on it.

19 MR. SADEQUEE: This last question you mean? The
20 last question, okay.

21 BY MR. SADEQUEE:

22 Q. I'm asking what types of topics, whether it be in
23 relation to this book or not, just in general, what subject
24 matters did we have conversations about, especially since
25 let's say 2004 when I came back to the U.S. or during -- from

1 the time that you came to Bangladesh?

2 A. Okay.

3 MR. BLY: I object, hearsay and relevance,
4 Your Honor.

5 THE COURT: That would include if you had
6 discussions about where you were going to go out to dinner
7 or what kind of food you like. It's got to be relevant to
8 the case. I'm going to sustain the objection.

9 BY MR. SADEQUEE:

10 Q. Do we ever talk about political issues?

11 A. Yes, we talked a lot about the environment, we talked
12 about climate change, we talked about what you enjoy reading,
13 what you are exploring, what you are learning, and about the
14 various different books and articles and magazines that
15 you -- both you and I read in general. And that included
16 Islamic stuff, that included like you loved to read books on
17 animals and creatures, and bugs as well.

18 We explored lots of different topics around -- we also,
19 yeah, we discussed topics about like different, you know,
20 social movements around, like I said, certain political
21 stuff.

22 Q. What was the reason -- okay, I offered this book to
23 you. You did not read it, but what was the reasoning behind
24 you not reading it?

25 A. I had a whole bunch of other stuff to read as well, and

1 it just kind of, you know, prioritizing what it is that
2 I read.

3 And I glanced at it and, you know, I hope to get there,
4 you know, get to it one day.

5 Q. So it was not a priority to you to read it?

6 A. At that time it wasn't a priority when you first gave it
7 to me.

8 Q. Had you heard of Tibyan Publications before? Did I
9 mention it to you before?

10 A. I don't recall you mentioning it, but, you know, like
11 I saw this back then. So that's how I just learned about it
12 then. But then I also learned a lot about it as a result of
13 this case.

14 Q. Now, you had seen me -- how often did I work on the
15 computer?

16 A. You would work on the computer, what, maybe --

17 Q. Not at work, not at Raksha. I'm talking about at home.

18 A. At home, I mean, you know, you were studying, either you
19 were studying or talking to Happy on the phone or you were
20 helping me out or hanging out, or you are on the computer.

21 Q. Do you recall, if you were to give a percentage, how
22 much time did you see me sitting in front of the computer?

23 A. Not any more than I do. Gosh, maybe a few hours a day,
24 maybe a couple hours a day, I mean, in terms of what I saw
25 you.

1 Q. What else did I use to do at home?

2 A. You studied a lot for your GEDs mainly and for your
3 SATs. You talked with Happy a lot, pretty much every evening
4 on the phone.

5 And then, you know, occasionally you would hang out with
6 my friends, you would hang out with me. We would go to
7 different pot lucks, health food events and different
8 conferences.

9 We volunteered a lot as well. You were working with a
10 few nonprofit groups here in Atlanta, working for peace and
11 justice issues, working to end violence against women.

12 Q. I am saying in terms of what did I do at home?

13 A. Well, sometimes, you know, we would comment, we would
14 talk about this kind of work at home and discuss them so we
15 could do our work better.

16 And, let's see, you and I used to make food together a
17 lot because you were learning how to make food for yourself.

18 Q. Have you observed any violent behavior on my part?

19 A. Never.

20 Q. Has anyone ever complained to you about me being
21 violent?

22 A. No. Quite the contrary, everybody that has ever met you
23 has always said how precious you are.

24 MR. BLY: Objection, Your Honor.

25 THE COURT: Sustained.

1 BY MR. SADEQUEE:

2 Q. Did you ever see me -- did you ever see me teaching our
3 sister-in-law how to shoot paintballs or something?

4 A. I think you guys -- I think you guys talked about it. I
5 don't recall actually seeing you, but I remember you guys
6 talking about it.

7 Q. Did you ever have any intention of one day going
8 paintballing with me?

9 A. I did, I wanted to go, do some paintball. It sounds
10 like fun.

11 Q. Now, after I did my GEDs and SATs, do you recall what
12 universities we had talked about in my further studies?

13 A. Yes. We were -- well, we were considering -- and I was,
14 you know, I was kind of offering certain suggestions to you
15 just to get you introduced to different options that are out
16 there around Kennesaw, Kennesaw University, Georgia State
17 University.

18 You had -- let's see, I think those are the only two
19 that we really got to talking about. And then there were
20 other options that I just never got to share with you just
21 because of timing.

22 Q. Now, you mentioned that in Bangladesh I studied -- do
23 you know when I went back in 2005, what did I study over
24 there?

25 A. I'm sorry, I didn't hear your question.

1 Q. In 2005 I went back to Bangladesh and I continued my
2 studies. Do you know what I was studying in 2005, 2006,
3 prior to my arrest?

4 A. Prior to your arrest? Yeah, you were studying the math
5 and academics, just, you know --

6 Q. You know what, if you could look at Exhibit 10 and 11?

7 A. Yeah.

8 Q. Do you recognize those?

9 A. The academics, yes.

10 Q. What are those?

11 A. This is your tuition payment receipt and class schedule
12 for the North South University in Bangladesh where you
13 enrolled around the math and English classes.

14 Q. Is this the one you are looking at? Is this what you
15 are describing to me?

16 A. Yeah, this looks like the schedule.

17 Q. Could you read what it says?

18 A. This looks -- it says cash received for your tuition
19 fees. It's by the Dhaka bank.

20 Q. Now, if we could go to Exhibit -- how often did I use
21 to speak about getting married prior to going to Bangladesh
22 throughout --

23 A. A lot. You talked about -- I mean, you were really
24 concerned too because Happy was -- Happy was about -- you
25 know, her parents were pressuring her to get married, and

1 that was really concerning to you because you loved her and
2 you really wanted to be with her and you wanted to make sure
3 you could be with her.

4 So you talked about her a lot. You talked to her a lot,
5 almost every night. And, yeah, like -- it was almost like
6 she totally supported you and everything that you were doing
7 and making sure you had the money, you were saving up for the
8 wedding.

9 Q. And this was -- what period of time did I begin -- at
10 what point in time did I start discussing with you about --
11 and my family about getting married to Happy?

12 A. Well, it became really urgent once you found out that
13 her family was pressuring her to get married to somebody
14 else. And, you know, that was -- that was concerning to me
15 as well to hear that.

16 And it was probably I would say several, several weeks
17 before -- several maybe even months before you actually went,
18 before you actually were able to go over there.

19 MR. SADEQUEE: That would be it. Thank you.

20 -- -- --

21 CROSS-EXAMINATION

22 BY MR. BLY:

23 Q. Good afternoon, Ms. Sadequee.

24 A. Good afternoon.

25 Q. You mentioned that you work for a nonprofit

1 organization. Is that right?

2 A. Yes.

3 Q. That's Raksha?

4 A. Raksha.

5 Q. Okay. And Defendant Sadequee worked there at times
6 also?

7 A. Yes, he did.

8 Q. Ms. Casperson, if we could pull up Exhibit 60?

9 Ms. Sadequee, this is a document that's already in
10 evidence and titled "The Ruling Regarding Killing One's Self
11 to Protect Information."

12 Is this a document that you have seen before?

13 A. No.

14 Q. You haven't read it?

15 A. No.

16 Q. You certainly didn't write it, did you?

17 A. No.

18 Q. Could we look at Exhibit 60-A?

19 Ms. Sadequee, this is the same document. It's a
20 Microsoft Word document with the properties box displayed
21 showing that the company associated with the Microsoft Word
22 version where this document was created is Raksha.

23 That's where you work; correct?

24 A. Yes.

25 Q. Based on the title, "The Ruling Regarding Killing One's

1 Self to Protect Information," is that the kind of document
2 that Raksha would normally be producing?

3 A. Not necessarily, no. But Raksha, we do a lot of
4 education and awareness on interfaith issues, all faith-based
5 type of materials.

6 So there is a chance, but not -- not -- I haven't come
7 across that document when I was working there.

8 Q. Does Raksha do education on topics like killing one's
9 self to protect information?

10 A. Not that I'm aware of.

11 Q. This document was found -- and the author, I think you
12 said this before, is listed as Sonali Sadequee. This is not
13 something you wrote; correct?

14 A. No.

15 Q. This document was found on a computer of a person in the
16 United Kingdom named Waseem Mughal. Is that a name that you
17 are familiar with?

18 A. No.

19 Q. Not somebody you have run into as a client of Raksha or
20 anything like that?

21 A. Not that I know of.

22 Q. You mentioned that your brother, Defendant Sadequee,
23 studied in Toronto for a period; is that right?

24 A. Yes.

25 Q. He was not studying in Toronto in March of 2005. Is

1 that correct?

2 A. March 2005? That's when he was in Atlanta.

3 Q. He was living in Atlanta in March of 2005; right?

4 A. Uh-huh.

5 Q. So he was not still enrolled in school in Toronto in
6 March of 2005?

7 A. No.

8 Q. You talked a fair bit about different friends and
9 associates of both you and Defendant Sadequee, and I wanted
10 to talk to you about a few names to see if they are folks
11 that you are familiar with.

12 A gentleman by the name of Aabid Hussein Khan. Is that
13 somebody that you know?

14 A. No.

15 Q. You might know him by the name Abu Umar, is that name
16 familiar?

17 A. The name Omar is familiar, but I'm not sure if it's the
18 same person that you are talking about.

19 Q. Abu Umar was often used by Mr. Khan as an online or
20 e-mail moniker. You are not familiar with it in that
21 context, are you?

22 A. No.

23 Q. The name Younis Tsouli, is that somebody you are
24 familiar with?

25 A. No.

1 Q. Maybe the nickname Irhabi 007, Terrorist 007, is that a
2 name you are familiar with?

3 A. Now, I should say some of these names I have become
4 aware of as a result of this case.

5 Q. But they are not somebody that --

6 A. That I have known, no.

7 Q. Not anybody that you have talked to?

8 A. No.

9 Q. Nobody that you know, nobody that you have talked to
10 your brother about?

11 A. No.

12 Q. How about Mirsad Bektasevic, is that somebody you know
13 or have heard about?

14 A. From this case.

15 Q. But not before this case?

16 A. No.

17 Q. Maximus, that wasn't somebody that you and your brother
18 ever talked about?

19 A. No.

20 Q. You talked a little bit about your brother's
21 wedding. This was not a wedding that you were in attendance
22 at; correct?

23 A. Correct.

24 Q. Do you have Exhibit 16 up there in front of you? It's
25 the one with the receipts and invoices.

1 A. Is this the one?

2 Q. It was the one with the -- that discussed the jewelry,
3 that had the invoices and receipts for the jewelry.

4 A. This is probably it. I think the sticker fell off.

5 This is it, yes. It's a different page.

6 MR. BLY: If I might be able to see that for a
7 second?

8 Thank you.

9 BY MR. BLY:

10 Q. I'm not going to go back through all of that nearly in
11 the detail I did before, but I wanted to ask you one question
12 about it.

13 This is part of the document, Exhibit 16, you talked
14 about before that lists some jewelry and prices paid for the
15 jewelry. I would ask you, if you could, to read the name at
16 the very top of the document?

17 A. Just to be sure, maybe point at it.

18 Q. Sure. Right there where it says name?

19 A. Okay. So that's looks like my dad's name.

20 Q. So on this paid invoice, the name at the top, that's
21 your father's name?

22 A. Uh-huh.

23 Q. Defendant Sadequee showed you a document that he gave
24 you to read. It was an At-Tibyan Publications document.

25 I think you said you did not read that one. Is that

1 correct?

2 A. Correct.

3 Q. I would like to show you just a couple other Tibyan
4 documents and ask if your brother shared those with you.

5 Ms. Casperson, if we might be able to bring up
6 Exhibit 46-A?

7 This is another Tibyan Publications document titled
8 "Fundamental Concepts Regarding Al-Jihad." Is this ever a
9 document that you have read?

10 A. Not -- no, I haven't read this particular document.

11 Q. This wasn't anything your brother shared with you?

12 A. No. But I have seen those kind of documents around.

13 Q. You have seen these kind of documents around?

14 A. Uh-huh.

15 Q. Let's look at 56-A. It's another At-Tibyan Publications
16 document titled "Verdict Regarding the Permissibility of the
17 Martyrdom Operations." Is this a document that you have read
18 before?

19 A. Not this particular one, no.

20 Q. So this wasn't anything your brother shared with you and
21 asked you to read?

22 A. No. But I have seen lots of documents like that over
23 the years.

24 MR. BLY: Nothing further, Your Honor. Thank you.

25 THE COURT: All right. Any redirect?

1 MR. SADEQUEE: Yes.

2 -- -- --

3 REDIRECT EXAMINATION

4 BY MR. SADEQUEE:

5 Q. This is another jewelry item. If you could read the
6 name?

7 A. That's Happy's name, Happy Shahnaz.

8 Q. Do you know if Happy works in Bangladesh?

9 A. I think she was working at one point.

10 Q. Does she have any income in Bangladesh? Or what does
11 she do in Bangladesh?

12 A. She was studying. She was going to school, college
13 there.

14 Q. Does she work in Bangladesh?

15 A. I'm not sure if she was actually employed in
16 Bangladesh.

17 Q. So would you say she has no income in Bangladesh? Is
18 it typical for a woman of that age to work in Bangladesh?

19 A. Oh, no. I mean, her parents supported her. I know that
20 for sure.

21 Q. And in Bangladesh how is it culturally, right, for
22 wedding ceremonies, the exchange of jewelry items? Who pays
23 for what?

24 A. Well, the groom, you know, the groom's family actually
25 pays for the vast majority of the wedding expenses in

1 general. I mean, it's customary, tradition.

2 Q. The government asked you about my father's name.

3 A. Uh-huh.

4 Q. Now, do you know if our father -- what was his attitude
5 with regards to me and Happy getting married?

6 A. Well, you know, originally, because Happy's dad and our
7 dad didn't really get along the best, you know, they weren't
8 agreeing. But eventually, you know, everybody else, like
9 Happy's mom, our mom, you know, us, the siblings, and, you
10 know, Happy's friends and your friends, we were all
11 supportive of you guys getting married.

12 And so we, we convinced the fathers to support it as
13 well. And so he eventually -- and they eventually supported,
14 because it was very clear that you guys really wanted to be
15 with each other and you guys loved each other very much.

16 Q. Now, if I may just go back to this, this is my father's
17 signature. Now, the writing here, it's all in -- a lot of it
18 is in -- what language?

19 A. It's Bengali. That handwriting is really fancy Bengali.

20 Q. Do you know if I'm literate in Bengali? Do I read it
21 and write it?

22 A. Not that I'm aware of, no.

23 Q. Does my father read and write Bengali?

24 A. Of course.

25 MR. SADEQUEE: Thank you.

1 THE COURT: Does anybody want Ms. Sadequee subject
2 to recall?

3 MR. BLY: No, Your Honor.

4 MR. SADEQUEE: No.

5 THE COURT: We appreciate your testimony. Please
6 don't discuss it with anybody until you hear the case has
7 been concluded.

8 THE WITNESS: Okay.

9 THE COURT: Thank you for being with us.

10 I'm going to take our midafternoon break. We will
11 be in recess for fifteen minutes.

12 The case is still coming in, so please don't
13 discuss it amongst yourselves or with anybody else. We will
14 be in recess for fifteen minutes.

15 (In open court without a jury present:)

16 THE COURT: All right. The jury has left.

17 Have you made your decision about your own
18 testimony, Mr. Sadequee?

19 MR. SADEQUEE: I don't believe I will be
20 testifying.

21 THE COURT: You know, this is a trial, and you have
22 requested it. You certainly have the right to a trial.

23 At a trial you really have two rights about your
24 own testimony. First, you have the right to testify, if you
25 choose to do so. But you also have the right not to testify,

1 and those are two rights that are personal to you.

2 Do you understand those rights?

3 MR. SADEQUEE: Yes.

4 THE COURT: And is it your decision not to testify
5 in your case?

6 MR. SADEQUEE: Yes.

7 THE COURT: All right. Is there anything further
8 I need to cover regarding that issue, Mr. McBurney?

9 MR. MCBURNEY: I think the defendant is aware of
10 the instruction that you will give as the Court that the jury
11 is not to hold that against him in any way, the standard
12 language. I assume Mr. Samuel has explained that to him when
13 he made that decision.

14 THE COURT: Mr. Samuel, is that something that you
15 have discussed with Mr. Sadequee, what his right is and what
16 choices he has?

17 MR. SAMUEL: Yes.

18 THE COURT: And his -- was his answer today
19 consistent with your discussions with him?

20 MR. SAMUEL: Well, we had many discussions, many
21 options. Obviously things kind of changed as of last week.

22 But we have been talking about it, and my
23 understanding was that the decision he just made was the
24 decision he was going to make, but he was always somewhat
25 tentative. So I think he's been very thoughtful about it.

1 THE COURT: And that is true that the jury will be
2 instructed that the fact that you did not testify cannot be
3 held against you in any way.

4 All right. Do you have any other witness to call?

5 MR. SADEQUEE: No.

6 THE COURT: All right. So does the defense rest?

7 MR. SADEQUEE: Yes.

8 THE COURT: Is there any rebuttal?

9 MR. McBURNEY: No, sir.

10 THE COURT: All right. Here is what I plan. I am
11 going to release the jury for the rest of the day, which I
12 will -- I will do in about ten minutes after we have our
13 break.

14 Now understanding that the defense has rest and
15 that the government has rest, are there any motions that you
16 want to make?

17 MR. SADEQUEE: Can I renew the earlier motion?

18 THE COURT: Yes, you may. And I'm assuming that
19 you are renewing it based upon all the grounds that you had
20 stated previously. Is that correct?

21 MR. SADEQUEE: Yes.

22 THE COURT: And would the government like to
23 respond to the renewed motion?

24 MR. McBURNEY: We renew our response. I don't
25 think anything that the jury has heard through these past two

1 witnesses changes the calculus I shared with the Court.

2 THE COURT: And I agree. Under Rule 29, I find
3 that there is sufficient evidence to support a verdict on all
4 four of the counts, and therefore I'm denying the motion
5 under Rule 29.

6 So here was my plan. My plan was to release the
7 jury, and then beginning about 4:30 to have our charge
8 conference.

9 I have given you my revised conspiracy
10 charge. That's only the portion having to do with
11 conspiracy. There are a number of definitions that have to
12 be discussed, but I'm going to work from the submissions that
13 you have given to me for the definitions, and they of course
14 would follow on Counts One and Two, would follow both of
15 those counts. But we can go over that at the charge
16 conference.

17 Did you in fact get the revised conspiracy charge
18 for Counts One and Count Three?

19 MR. MCBURNEY: Yes, sir, as well as the First
20 Amendment piece as well. Those were the three things we
21 received.

22 THE COURT: And, Mr. Samuel, did you and
23 Mr. Sadequee receive the same materials?

24 MR. SAMUEL: Yes.

25 THE COURT: All right. So that will give you a

1 chance to review that if you haven't had chance to do so
2 already.

3 Customarily -- and I'm actually all set up to do
4 the charge conference in my chambers, but that is based upon
5 whether or not the defendant is going to attend. Often
6 defendants don't attend the charge conference.

7 I know that you are handling that on his behalf,
8 but does the defendant want to be at the charge conference?

9 MR. SAMUEL: I think he should be, Your Honor.

10 THE COURT: All right. Then we will do it in
11 here. Then let's move the charge conference to 4:45 because
12 I will have to get reset up with all my organization in
13 here.

14 No, let's still make it 4:30. I will just work
15 fast. I think the charge conference will go forty-five
16 minutes to an hour. Then we will adjourn for the evening.

17 Then my plan would be beginning promptly at 9:00,
18 we will begin with openings -- I mean, with closings. Then
19 right after closings, I will give my charge, and then they
20 will begin deliberating. So they will be deliberating by
21 late morning.

22 Does that plan sound satisfactory to everybody?

23 MR. McBURNEY: Yes, sir.

24 THE COURT: I forgot how long I gave you for
25 closings.

1 MR. MCBURNEY: One hour.

2 THE COURT: An hour?

3 MR. MCBURNEY: It was a moment of weakness on your
4 part.

5 THE COURT: That's what I thought I said.

6 All right. Anything else we need to discuss before
7 we take our portion of the break?

8 All right. We will be back in about ten minutes.

9 (A recess is taken at 3:45 p.m.)

10 -- -- --

11 (In open court without a jury present at
12 4:04 p.m.):)

13 THE COURT: Is there anything we need to discuss
14 before we bring the jurors back in?

15 MR. MCBURNEY: No, sir.

16 THE COURT: Mr. Sadequee, anything?

17 MR. SADEQUEE: No.

18 THE COURT: All right. Could you bring the jurors
19 in, please?

20 (In open court with a jury present:)

21 THE COURT: Welcome back, ladies and gentlemen.

22 Mr. Sadequee, do you have any more witnesses?

23 MR. SADEQUEE: No.

24 THE COURT: Then does the defense rest?

25 MR. SADEQUEE: Yes.

1 THE COURT: And does the government have any
2 rebuttal evidence?

3 MR. McBURNEY: No, sir.

4 THE COURT: Ladies and gentlemen, that means that
5 the evidence is closed, and we go on to the next portion of
6 the proceeding, which are closing arguments and the jury
7 charge.

8 But that will not happen today, because I can never
9 determine the law to charge you on until the evidence is all
10 in.

11 Now that the evidence is all in, I have to go back
12 and make sure that I cover all of the issues that need to be
13 covered with you in the charge. And because it will take me
14 about an hour to do that, it doesn't make any sense for you
15 to wait here, because we will not get to closing arguments
16 this afternoon and the case necessarily will go on to
17 tomorrow.

18 So I thought the most efficient use of your time
19 would be to release you now so that I can meet with the
20 lawyers and go over the charge, and also meet with the
21 defendant and go over the charge with him, so that when you
22 come back tomorrow, that's all done.

23 And tomorrow at 9:00, the first order of business
24 will be closing arguments, and as soon as the closing
25 arguments are over, I will charge you, and then after the

1 charge, you will begin your deliberations. So my estimation
2 is that you will begin deliberating by late morning.

3 So I just think that's the best way to manage your
4 time, and that's the schedule that I'm going to put in
5 place.

6 Now, just because the evidence is all in doesn't
7 mean you can discuss it, because you can't discuss it without
8 knowing the charge. So again, even though you are retiring
9 for the evening, do not discuss the case amongst yourselves
10 or with anybody else.

11 We will begin tomorrow morning at 9:00 with the
12 closings and then go right into the charge to you and then
13 you will begin your deliberations. So have good evening, and
14 we will see you tomorrow morning at 9:00.

15 (In open court without a jury present:)

16 THE COURT: All right. I'm going to need some time
17 in here alone talking with my clerk as I get organized since
18 we are having the charge conference in here rather than in my
19 chambers.

20 So I'm going to ask everybody to leave the
21 courtroom so that I can have my discussions with my law
22 clerk. But you can come back in -- it's already 4:00. I'm
23 going to need about twenty minutes, so come in back in
24 shortly before 4:30 so we can start.

25 So whatever you need, I will give you about five

1 minutes and I will collect my things, but take whatever you
2 need to get ready for the charge conference with you. And
3 then if everybody would please leave while I get set up,
4 everybody can come back in at 4:30.

5 MR. SAMUEL: Your Honor, there was a document that
6 we were trying to find on the internet after Mr. Kohlmann
7 testified. We didn't find it until after lunch. We couldn't
8 print it out. We were having trouble printing it out.

9 Mr. Sadequee was asking whether he can introduce
10 that one document. It came up during Mr. Kohlmann's
11 testimony. It was not something, as I understand it,
12 Mr. Sadequee actually asked him about. It was an answer that
13 Mr. Kohlmann gave that brought up the topic of another
14 article or book.

15 And he's asked me to ask you if we could tender
16 this one document. I'm going to try to print it out now. We
17 still have not been able to.

18 I'm going to show it to the government and
19 hopefully encourage them to continue to allow us to introduce
20 this one other document.

21 MR. McBURNEY: I explained to the defendant that we
22 oppose this. We were flexible enough with the
23 eleventh-and-a-half-hour discovery.

24 I understand it's something that came up on
25 cross-examination, but it's an article about which the

1 defendant had much to say on Tibyan, et cetera, and didn't
2 strike me as something that wasn't a foreseeable topic of
3 discussion with our expert witness, if not his own expert
4 witness that he more recently dismissed.

5 So we oppose the after-the-closure-of-evidence
6 introduction of this item.

7 THE COURT: Well, Mr. Kohlmann testified this
8 morning now about three hours ago, four hours ago.

9 MR. SAMUEL: Right.

10 THE COURT: I have come in twice since then and
11 asked if there is anything to be brought up with the
12 Court. I came in before -- I released the jury to ask if
13 there was anything else, and I specifically asked
14 Mr. Sadequee if he had any other evidence, any other
15 witnesses I guess I said, and he said no. And I asked does
16 the defense close -- rest, and he said that they did.

17 So I have released the jury with the instruction
18 that we will -- that the evidence is over. And if the
19 evidence were reopened, the government would have the right
20 to call Mr. Kohlmann back to explain whatever he said about
21 that document. It would seem to me that Mr. Kohlmann would
22 have the right to review the document to see whether or not
23 what the defendant claims would be -- it says what he thinks
24 it says, which has not always been the case.

25 But I have been generous in giving you,

1 Mr. Sadequee, every opportunity to tell me if there is
2 something else that you want. And the purpose of having the
3 discussion before I brought the jury back in with you about
4 the case was to make sure that when the jury came back in,
5 that there was no more evidence and that the evidence was
6 over, and you told me that it was.

7 So your request after the evidence has been closed
8 and after you have rested, without any more specific
9 articulation about any relevance that this document may have,
10 is denied.

11 Anything else?

12 MR. MCBURNEY: No, sir.

13 THE COURT: All right. I will let you know when
14 I'm ready for everybody to come back in.

15 (A recess is taken at 4:12 p.m.)

16 -- -- --?

17 (In open court without a jury present at
18 4:42 p.m.):)

19 THE COURT: All right. I want to make sure the
20 record is clear about this late request by the defense to
21 introduce this document, because I want the appeals court to
22 know exactly what happened.

23 It concerns an unspecified document from the
24 internet the defense told me was mentioned by Mr. Kohlmann
25 during his testimony. At the time it was mentioned to me it

1 had not yet been printed out off the internet even though the
2 document had been mentioned apparently by Mr. Kohlmann,
3 whatever the document is, some three or four hours before it
4 was first brought to my attention.

5 What happened this afternoon is this. That after
6 the defendant put up his last witness, his sister, I had the
7 jury retire to the jury room, and while they were retired
8 I asked the defendant if he had any further witnesses, and he
9 said no.

10 Then I asked if he was going to testify, and he
11 said that he wasn't going to. I told him of his rights to
12 testify, and he told me that he understood his rights and
13 that he elected not to testify.

14 And then I asked him before -- this is all before
15 the jurors came back, I said does the defense rest, and he
16 said that the defense rests.

17 And then in his presence, I asked the government if
18 they had any rebuttal, because the government now knew that
19 the defense didn't intend to offer any more evidence, and the
20 government told me that they had no rebuttal.

21 And only after I got those representations did
22 I ask the jurors to come back in. And again I asked the
23 defendant if he had any more witnesses, and he said no. And
24 then I said does that mean that the defendant rests, and he
25 said yes.

1 Then I asked the government if they had any
2 rebuttal, and they said no. Then I told the jurors that the
3 evidence was closed.

4 And based upon the representations of the defendant
5 and of the government, which were making decisions as was
6 apparent to me based upon what Mr. Sadequee said his case
7 was, I told them what the schedule was, which is that they
8 would be released for the afternoon because there was no more
9 evidence to be heard, no more evidence for them to consider,
10 and that they would come back tomorrow and hear
11 closings. And the jury was released.

12 Then and only then did the defendant say that he
13 had a document which he has not identified which Mr. Samuel
14 told me had not yet been printed off of the internet having
15 to do with some matter that was never articulated to me that
16 somehow related in some way to Mr. Kohlmann's testimony.

17 The most I heard was that Mr. -- it had come up
18 I think is the way that it was put by the defense, it had
19 come up in his testimony and that they had been looking for
20 it and had found it, but they hadn't been able to print
21 it. I was never told what the document was or how it related
22 to the case.

23 It is clear that the defendant has no more
24 witnesses, so I don't know how the document would ever be
25 introduced. Even if I had allowed it, there is nobody to

1 identify it, there is nobody to testify about it, there is
2 nobody to explain it.

3 His request was simply for me to make an
4 accommodation to him to take a document that was not properly
5 identified or had not properly been introduced about a
6 witness who was done testifying some three or four hours ago
7 and to simply offer it into evidence.

8 There is no grounds to do that, I have no legal
9 foundation to allow it, it is out of time, and it is not
10 allowed.

11 Is there anything about that history that I got
12 wrong?

13 MR. McBURNEY: I don't believe so, Judge.

14 THE COURT: Mr. Sadequee, is there anything about
15 that history of what happened this afternoon and what you
16 wanted to do that is not correct?

17 MR. SADEQUEE: No.

18 THE COURT: All right. Let's go on then to the
19 charge conference.

20 I'm going to work from the standard instruction
21 that I have given to you and that is on our website. I'm
22 going to have this copy of the standard instruction marked as
23 an exhibit because we will be working from it.

24 So if you will mark that as a Court's exhibit,
25 Jessica, I would appreciate it.

1 All right. Does everybody have copy of the
2 standard instruction?

3 MR. McBURNEY: The Court's Standard Instructions to
4 the Jury, and then in parentheses, Before Deliberations?

5 THE COURT: Yes, that's it. Do you have a copy of
6 it?

7 MS. CLARK PALMER: I do, Your Honor.

8 THE COURT: I forget your name.

9 MS. CLARK PALMER: Amanda Clark Palmer.

10 THE COURT: Is it just Clark Palmer or just Palmer,
11 what's your preference?

12 MS. CLARK PALMER: Clark Palmer.

13 THE COURT: All right. So let's begin on page
14 one. I will begin with it is my duty to instruct you on the
15 rules of law. So I will give the instruction that's on page
16 one.

17 The instruction on page two is the duty to follow
18 instructions, presumption of innocence. But that assumes the
19 defendant would testify, so I will not give that one.

20 I will give the instruction on the next page, which
21 is the duty to follow instructions, presumption of innocence,
22 when any defendant does not testify. Because that has the
23 language that says if a defendant elects not to testify, you
24 should not consider that in any way during your
25 deliberations. That's why we give that instruction.

1 On page four is the definition of reasonable -- and
2 so far, does anybody have any objections to the instructions
3 I intend to give?

4 MR. McBURNEY: No, sir.

5 MS. CLARK PALMER: No, Your Honor.

6 THE COURT: All right. Then on page four begins
7 the definition of reasonable doubt, and that's all contained
8 on that page. Any objection to the instruction on reasonable
9 doubt?

10 MS. CLARK PALMER: No, Your Honor.

11 MR. McBURNEY: No.

12 Not a great charge, but it's the pattern
13 charge. We are not seeking to change pattern charges today.

14 THE COURT: That would be a good choice on your
15 part.

16 The next is consideration of the evidence, direct
17 and circumstantial, argument of counsel, and comments by the
18 Court.

19 I have to amend that, as I have done already, to
20 address the fact that the defendant is representing himself.
21 And so my proposal is in line four that begins, Anything the
22 lawyers said, and then I would add the following: Or which
23 the defendant said when acting in his capacity as his
24 counsel, such as questions he asked of witnesses, any
25 responses he made to the Court, or in his opening and closing

1 statements, are not evidence in the case.

2 Any objection to that addition?

3 MS. CLARK PALMER: No, Your Honor.

4 MR. McBURNEY: No.

5 THE COURT: In the line -- two lines down where it
6 says lawyers say, I would add after that so that that would
7 read beginning with the first sentence: What the lawyers say
8 and what the defendant says acting as his own counsel is not
9 binding upon you.

10 Any objection to that addition?

11 MS. CLARK PALMER: No, Your Honor.

12 MR. McBURNEY: No, sir.

13 THE COURT: All right. Next is credibility of
14 witnesses. I intend to give that instruction as it's
15 presented on page six and seven.

16 Any objection to it?

17 MR. McBURNEY: No.

18 MS. CLARK PALMER: No, Your Honor.

19 THE COURT: Next is impeachment, inconsistent
20 statement, and felony conviction. Any objection to that
21 instruction as it appears on page seven and eight?

22 MR. McBURNEY: Assuming giving at least on our copy
23 the felony offense language is bracketed --

24 THE COURT: Yes.

25 MR. McBURNEY: -- that we did have a witness with a

1 felony offense.

2 THE COURT: I understand. I am going to give
3 that. I'm actually going to move that to the end of
4 that. Because looking at this again, I think it's a bit
5 misplaced, so I'm moving it to the end of that entire
6 instruction. But that will be given.

7 MR. McBURNEY: Okay. Then no objection.

8 THE COURT: Any objection?

9 MS. CLARK PALMER: Are you going to take out on
10 page eight where it says defendant testifies --

11 THE COURT: I'm not there yet.

12 MS. CLARK PALMER: Oh, I'm sorry. I apologize.

13 THE COURT: Well, seven and eight, but only the
14 impeachment, inconsistent statement, and felony conviction
15 instruction?

16 MS. CLARK PALMER: No objection.

17 MR. McBURNEY: Judge, before we move to the next
18 charges on eight, we submitted a proposed charge about
19 accomplice immunity.

20 THE COURT: I'm not there yet.

21 MR. McBURNEY: Okay. I wasn't sure if you were
22 putting it --

23 THE COURT: I'm putting it in this area, but we are
24 not there yet.

25 I will not give the defendant testifies with no

1 felony conviction or the defendant testifies with felony
2 conviction, so those two on page eight are deleted.

3 I did intend -- you recall I gave a short
4 instruction on prior conviction of Mr. Ahmed.

5 MR. MCBURNEY: Yes.

6 THE COURT: I was going to give that now. I have
7 already dealt with the felony convictions, and I thought with
8 respect, since he is a co-defendant, I would give that
9 instruction next.

10 MR. MCBURNEY: That it has no bearing on this
11 case?

12 THE COURT: Right. I will just remind you all, I
13 will just read it to you again: Mr. Ahmed's conviction
14 should not be used as evidence that the defendant is guilty
15 of the offenses with which he is charged. You will be
16 required to consider only the evidence presented in this
17 trial to determine if the defendant is guilty or not guilty
18 of the offenses charged in this case.

19 And I think that logically follows where we have
20 talked about somebody testifying with a felony offense, that
21 we deal with him separately, because I think he is a special
22 witness in the case.

23 MR. MCBURNEY: No objection.

24 THE COURT: Okay. Then I intended to give the
25 accomplice immunity, plea agreement instruction, because

1 again that is a credibility-oriented instruction. And
2 I intended to give it as Government's Request to Charge
3 No. 15 sets out.

4 Is there any objection to that instruction?

5 MS. CLARK PALMER: No objection.

6 THE COURT: All right. The next is on page nine of
7 the standard instruction, impeachment, bad reputation or
8 opinion concerning truthfulness.

9 I don't think there was any evidence of that that
10 I remember?

11 MS. CLARK PALMER: I can't think of any.

12 THE COURT: All right. Then I will not give that
13 instruction.

14 Then I will give the expert witness instruction as
15 it's set forth on page nine, but I probably will say there is
16 one expert that testified in this case, that was
17 Mr. Kohlmann, and then read the instruction after I --

18 MR. SAMUEL: We had the computer guy. The computer
19 guy was an expert.

20 THE COURT: Did I qualify him as an expert?

21 MR. McBURNEY: We didn't tender him as an
22 expert. He can call him one, but we didn't proffer him that
23 way.

24 MR. SAMUEL: Okay.

25 THE COURT: So it will be identified only with

1 respect to Mr. Kohlmann. Any objection to that?

2 MR. MCBURNEY: No.

3 MS. CLARK PALMER: No objection.

4 THE COURT: I will give the notetaking instruction
5 on page ten as it's written in the standard instruction. Any
6 objection to that?

7 MS. CLARK PALMER: No objection.

8 MR. MCBURNEY: No.

9 THE COURT: A very controversial instruction.

10 Now we get to the instructions that are specific to
11 the case. In the first introduction part, I will just note
12 it charges the defendant with four offenses, each of which is
13 called a count, and then I will say in order for you to find
14 the defendant guilty of any of the charges -- any of the
15 counts charged in the indictment, the government must prove
16 to you beyond a reasonable doubt that the defendant committed
17 each element of the offense.

18 And then now let's move to the counts. As I told
19 you, in going through the suggestions by the parties,
20 I didn't like giving some instructions and having somebody
21 wait a long time, especially only the Count Three conspiracy,
22 and have to remember back what the specific instructions were
23 on conspiracy generally.

24 So as I said, while there is some redundancy here,
25 it has been my practice to fully instruct where there is more

1 than one conspiracy on conspiracy each time there is a
2 conspiracy charge.

3 So I have given to you my thoughts on Count One and
4 the charge that I would like to give, so let me -- and does
5 everybody have a copy of that? It says at the top,
6 Count One, conspiracy to provide material support to
7 terrorists.

8 Unlike the government's, it's in a font large
9 enough for me to actually read it. So I would encourage the
10 government to read the Court's local rules and enlarge their
11 font to 14 points for the benefit of us who do a lot of
12 reading.

13 Any comments on the charge as I have redrafted it?

14 MR. McBURNEY: One from the government.

15 Do you want me to stay seated, go to the podium?

16 THE COURT: No, that's fine.

17 MR. McBURNEY: We have included in the previous
18 trial on the charge as well as the charge here reference to
19 the reasonable foreseeability. It's in Government's Request
20 to Charge No. 2.

21 There is a paragraph -- the sixth paragraph, Under
22 the law, a conspiracy is a criminal partnership, et cetera,
23 and cites the case law that stands for the proposition that
24 all members of a conspiracy are responsible for the acts
25 committed by other members as long as they are reasonably

1 foreseeable and help advance the conspiracy, which was one of
2 the focuses of our trial brief in this case.

3 We submitted it as a separate charge in the
4 preceding trial, the bench trial, and the Court we were told
5 gave it to the fact-finder as one of the instructions.

6 We incorporated it here in Government's Exhibit 2
7 rather than have it be a stand-alone. It didn't make it into
8 your description of conspiracy law that you don't need to
9 know every member of the conspiracy, et cetera. We would ask
10 that that language be in there.

11 THE COURT: Well, it was included in the first
12 trial because I understand the law of conspiracy, and
13 actually I thought it was redundant then.

14 If you go to the first -- but I'm willing to listen
15 to what you have to say, but I also don't want to confuse
16 people.

17 If we are giving them this charge on what a
18 conspiracy is, you will see on the first page of what
19 I provided to you, so it says, Under the law, conspiracy is a
20 kind of agreement or a kind of partnership -- your language
21 duplicates that -- in criminal purposes in which each member
22 becomes the agent or partner of every other member.

23 So when I began to look at yours as an additional
24 charge and began to collapse these, the logical place to put
25 that would be right after this. And I said, well, I would be

1 saying a lot of the same things again.

2 And whenever I say something a second time, I'm
3 afraid the jurors will say, well, it must be something
4 different the second time he said it.

5 MR. MCBURNEY: The magic sentence for us is the
6 second sentence of our paragraph basically explaining what
7 you mean in yours where you say they serve as agents or
8 partners for every other member.

9 And our perspective is that the concept of agency
10 or partnership isn't necessarily clear to the jurors. So the
11 sentence in the government's charge, page four of what we
12 submitted, the second full sentence of that final paragraph,
13 Thus all members of a conspiracy are responsible for the acts
14 committed by other members as long as they are committed to
15 help advance the conspiracy and are reasonably foreseeable
16 consequences of the conspiracy.

17 I believe that's the logical "so what" of you are
18 an agent or a partner. What does that mean to me as a
19 juror?

20 THE COURT: But this sounds a lot to me like overt
21 acts. Because your position I think on this offense is that
22 there is no overt -- no actions required of anybody other
23 than an agreement.

24 MR. MCBURNEY: This is true, but any actions that
25 may have been taken in furtherance of the conspiracy, all

1 members of the conspiracy are responsible for them insofar as
2 they are reasonably foreseeable and in furtherance of the
3 conspiracy.

4 MR. SAMUEL: That is like a *Pinkerton* instruction
5 which doesn't relate to the conspiracy. It's what proves a
6 substantive offense. It doesn't help you with a conspiracy
7 offense.

8 THE COURT: Yes, a conspiracy is complete when the
9 agreement is reached.

10 MR. SAMUEL: But the foreseeable acts is what
11 defines who is responsible for a substantive offense
12 committed by a co-conspirator.

13 THE COURT: Where did you get this, and what's the
14 context -- well, do you have the case? I didn't bring all
15 the cases in with me.

16 Is that in the context of a conspiracy where overt
17 acts are not required?

18 MR. McBURNEY: No, I think this would be in the
19 context of the more -- the 371 type case.

20 I understand Mr. Samuel's point. I think it is an
21 accurate statement of the law again insofar as the defense is
22 going to be, Look, there was just this conversation this one
23 time, and we point to concrete steps that were taken in
24 furtherance of the conspiracy.

25 They may not have been taken by the defendant

1 himself. Mirsad Bektasevic collects all these armaments.

2 THE COURT: What you are really saying is that you
3 can look at the overt -- the actions of people as evidence of
4 the underlying agreement, but the way that it's written, it's
5 as if you are responsible for something that's not required
6 under the offense elements.

7 MR. McBURNEY: Okay. In our trial brief, as we
8 framed it, it was more in terms of relevance and
9 admissibility here.

10 I hear where the Court is coming from.

11 THE COURT: I mean, there is probably a further
12 articulation of -- I mean, you could change this sentence I
13 would think to say that any conduct of any member of a
14 conspiracy, or the conducts of the -- the conducts of the
15 people alleged to be part of the conspiracy can be used to
16 determine if an agreement had been reached, which I think
17 that is an accurate statement of the law. But I think that
18 this, this language is not consistent with what the elements
19 are.

20 What's your thought on that, Mr. Samuel?

21 MR. SAMUEL: I think when you start advising the
22 jury this is the kind of evidence you can look at to help you
23 find that someone is guilty of a certain element, you are
24 going beyond what is necessary for a jury instruction.

25 Obviously there is a lot of argument --

1 THE COURT: Make a note of that, Nick, that he just
2 said that something that's not required as a jury
3 instruction, because we will get to that later.

4 MR. SAMUEL: Forget about what I said, then.

5 I mean, the point is that the government is
6 saying -- I assume their argument -- and it's not an
7 inappropriate argument -- is you could look at what Haris did
8 down the road to determine whether Haris and Sadequee agreed
9 to this earlier.

10 But it's not a legal issue. That's just a factual
11 way in which people reason.

12 We could also say -- and I don't think we have
13 asked the Court to instruct the jury -- you could look at the
14 fact that Mr. Sadequee got married and did nothing else in
15 Bangladesh, and therefore you can find -- that you should
16 instruct the jury, therefore you should find that he was
17 never guilty of a conspiracy.

18 Those are all closing argument points, they are not
19 jury instruction points. Jury instructions are simply here
20 are what the elements of the offense are, here is what the
21 crime is.

22 THE COURT: I mean, I go back to say that it's
23 redundant, at least large portions of your addition are
24 redundant; and second, as you have stated it, I don't think
25 it is a correct statement of the law.

1 And that it becomes then an evidentiary issue, I
2 believe, which you can argue. And like I said before, every
3 time you say something -- there are two things. Every time
4 you want something more, then the defense wants something
5 more.

6 And then we get into this convoluted instruction
7 that people can't understand because everybody is trying to
8 get an instruction that addresses specific little things in
9 the case that they want to argue.

10 MR. McBURNEY: I understand, and I will withdraw
11 this concern. I think it is something that I can articulate
12 in the closing, look at the actions in support of the
13 agreement that was made.

14 THE COURT: Okay. So then is this instruction that
15 I have redrafted acceptable to everybody?

16 MS. CLARK PALMER: We have a couple of comments,
17 Your Honor.

18 How are you going to handle definitions, if you
19 were --

20 THE COURT: I'm not there yet. I'm going to get to
21 the definitions, because they apply to both the conspiracy
22 and the substantive offense.

23 MS. CLARK PALMER: Okay. And then in the last
24 sentence in the first paragraph on page one, you have knowing
25 or intending that the material support or resources --

1 THE COURT: What page one are you talking about?

2 MS. CLARK PALMER: Of the charge on Count One,
3 conspiracy to provide material support to terrorists.

4 THE COURT: That page?

5 MS. CLARK PALMER: Yeah.

6 THE COURT: Okay, where are you?

7 MS. CLARK PALMER: Well, I will just skip -- at the
8 very last line, acts of terrorism transcending national
9 boundaries.

10 THE COURT: Yes?

11 MS. CLARK PALMER: And we had talked in the
12 preliminary instructions and also in the instructions we
13 submitted, we called it something different.

14 THE COURT: You know, I agreed with that at the
15 beginning of the case, but nobody has ever said violence in
16 this case. I think that's the word that you chose before?

17 MS. CLARK PALMER: In the preliminary instructions,
18 and then in our proposed jury instructions we called it to
19 kill, kidnap or maim people in the United States with conduct
20 transcending national boundaries.

21 THE COURT: Well, that's the element. This is a
22 general description. So we will get to the elements in a
23 second where I do that and that's what they have to follow.

24 But this is to give them an introduction to what
25 the charge addresses. And I will agree with you that

1 I changed -- agreed to change terrorism to violence, but I
2 have tried to listen carefully and make notes of how many
3 times people talked about violence, and I think there was one
4 person that said that. Everybody else has referred to it as
5 terrorism, everybody, including the defendant.

6 So what they know they have to follow are the
7 elements of the offense. This is just a way of getting the
8 introduction -- and it's almost as if we are taking a word
9 that has been replete throughout the testimony and nullifying
10 it.

11 And so the evidence just came in differently than I
12 expected, and everybody has referred to this as terrorism.

13 MS. CLARK PALMER: Are you going to include a
14 definition of acts of terrorism transcending national
15 boundaries after we go through the instructions for --

16 THE COURT: I'm trying to think, project ahead, but
17 if we get to a place where you think it needs more
18 definition, let's deal with it then. But otherwise I think
19 this is a fair -- in the context of the evidence in this
20 case, is a fair preliminary description.

21 So -- maybe we ought to do this one page at a
22 time.

23 Any objection to page one of Count One?

24 MR. McBURNEY: No, sir.

25 And I will add that it's in fact how it's

1 charged. Your document says he's charged with X, and the
2 language in the indictment is exactly what you are tracking
3 here. It's not the elements; it's a description of how the
4 defendant is charged.

5 THE COURT: That's true too.

6 MR. McBURNEY: The jurors will get the indictment,
7 and that's exactly what it says.

8 THE COURT: That's true. All this is is here is
9 what the government has said about him in the charging
10 instrument.

11 So I'm still on page one. I have got a bid from
12 the government that they don't object. I'm looking for the
13 defense's?

14 MS. CLARK PALMER: We are okay with page one.

15 THE COURT: Page two?

16 MR. McBURNEY: No objection.

17 MS. CLARK PALMER: No objection to page two.

18 THE COURT: Page three?

19 MR. McBURNEY: Still no objection.

20 MS. CLARK PALMER: No objection, just to note again
21 it says acts of terrorism, but understanding that we are
22 going to hopefully define that at some point.

23 THE COURT: All right. Then the concluding lines
24 on page four, any objection?

25 MR. McBURNEY: No.

1 MS. CLARK PALMER: No objection.

2 THE COURT: Just bear with me. I want to keep
3 everything straight here.

4 All right. Then we go to Count Two, and I worked
5 from the Government's Request to Charge No. 7 with a couple
6 of changes. This is their page 13, I believe, at the last
7 line of Paragraph 1, that it says "and," but it seems to me
8 that "or" is more appropriate.

9 So I was proposing that we change it from "and" to
10 "or." So any objection to that change?

11 MR. McBURNEY: No.

12 MS. CLARK PALMER: No objection.

13 THE COURT: And the next paragraph, to me it was
14 clearer in the third line. Rather than saying the
15 defendant -- well, Count Two charges the defendant with
16 actually doing so, which I didn't like, I thought it read
17 better to read that Count Two charges the defendant with
18 actually providing or attempting to provide material
19 support.

20 Admittedly that's wordsmithing, but I thought it
21 was clearer.

22 MR. McBURNEY: It's good wordsmithing. No
23 objection.

24 MS. CLARK PALMER: No objection.

25 THE COURT: All right. Any objection then to the

1 second page of the elements that are set forth, reserving the
2 terrorism transcending national boundaries issue?

3 MS. CLARK PALMER: No objection.

4 THE COURT: All right. Before we get to the
5 definitions, I thought we would address the Defendant's
6 Request to Charge 2-B, so the question I think is 2-B or not
7 2-B.

8 I think the fundamental question is this.
9 I understand why you requested it, and we have relied on the
10 assumption that you would provide us with legal support, so
11 we didn't do any independent research, although we are
12 prepared to do that.

13 That where the government does not charge a lesser
14 included offense, is there a requirement to charge in the
15 instructions on a lesser included offense?

16 Because I know that charging decisions often are
17 made with the view that the government takes the position
18 that that's the offense that they want to prove, that that's
19 what the government wants to put evidence up on, and if they
20 win on that, fine; if they lose on that, then the defendant
21 gets the benefit of not being convicted of the lesser
22 included offense.

23 But I might be wrong about that, now having read
24 this, which is -- has anybody done any research on this?

25 MR. NAHMIAS: Not on that precise issue,

1 Your Honor. But my understanding of the law is the
2 government can choose to charge it or not, and the defendant
3 if it's not charged can choose to go with only what the
4 government charged.

5 Or if there actually is a lesser included offense,
6 and we don't believe this is a proper lesser included
7 offense, the defendant can request the charge.

8 THE COURT: In *Wright Miller's* discussion of this,
9 it says, On the charge on whether to instruct the jury, the
10 defendant is certainly entitled to charge about the lesser
11 included offense as a matter of right.

12 MR. SAMUEL: That's correct.

13 MR. NAHMIAS: I believe as a matter of right,
14 assuming it's a proper lesser included offense charge.

15 THE COURT: Right. Okay, so that's the first
16 issue. So if they request it and it is indeed a lesser
17 included offense, he would be entitled to that.

18 So if it was a murder offense and if he had degrees
19 of murder, he would be entitled to an instruction on the
20 lesser included offense of a killing that has less than
21 malice aforethought.

22 So now I guess the question is is this a lesser
23 included offense, the threat of the providing of material
24 support charge.

25 And it seems to me two different kinds of conduct.

1 You know, one would be material support, and the other would
2 be making a threat. So what is your authority for the fact
3 that this is a lesser included offense, Ms. Clark Palmer?

4 MS. CLARK PALMER: Your Honor, the statute in
5 Counts One and Two is 18 U.S.C. 2339 (a). In that statute,
6 the crime is -- if I can paraphrase -- providing material
7 support and conspiring to provide material support to be used
8 in preparation for or to carry out, and then it lists a whole
9 bunch of other crimes. One of those other crimes is
10 18 U.S.C. 2332 (b).

11 The government didn't specify --

12 THE COURT: Well, by that argument, the lesser
13 included offense is the provision of material support,
14 because it would be providing material support for the
15 purposes of making a threat of something. Because I assume
16 what you are about to say is that the list includes this
17 threat under the list -- that list in 2332 (b) includes the
18 threatening offense?

19 MS. CLARK PALMER: The government did not allege in
20 the indictment whether the material support was used in
21 preparation for or to carry out either 2332 (b) or the other
22 one which was alleged, which was 956.

23 And the test for whether another offense is a
24 lesser included offense is whether it has all the same
25 elements as the greater offense. And in this case, one of

1 the ways that a person could violate the greater offense of
2 2339 (a) is if they violate 2332 (b), which could be a
3 threat, and then they provide material support to carry out
4 the threat.

5 So the additional element that distinguishes the
6 lesser included of 2332 (b) from 2339 (a) is the provision of
7 material support.

8 THE COURT: Well, 2332 (b), which defines
9 prohibited acts in subsection (b) -- all right, here is where
10 I get hung up. The charge in Count Two is to provide
11 material support including for acts of terrorism transcending
12 national boundaries.

13 2332 (b) simply defines what the prohibited acts
14 are; that is, the things for which you cannot provide
15 material support, which includes a threat.

16 MS. CLARK PALMER: Uh-huh.

17 THE COURT: So it seems backwards to me. It's the
18 provision of material support to do a threat, as opposed to
19 saying, well, if you don't provide -- what you are really
20 saying if you don't provide material support, you could be
21 charged with a different offense; that is, the prohibited act
22 offense of threatening?

23 MS. CLARK PALMER: Right, correct.

24 THE COURT: But I don't see how how that's a lesser
25 included offense.

1 And where are the elements of the offense for this?
2 Is that in there? The instruction I have doesn't have the
3 elements.

4 MS. CLARK PALMER: Of 2332 (b)?

5 THE COURT: Right. Because 2332 (b) isn't an
6 offense. It's a listing of prohibited acts; right?

7 MS. CLARK PALMER: You can also be charged with the
8 offense of violating 2332 (b), which would be threatening.

9 THE COURT: I guess that's right. So what are the
10 elements of a 2332 (b) offense of threats?

11 MS. CLARK PALMER: Threatening, conspiring or
12 attempting to kill, kidnap or maim -- kill, kidnap, maim,
13 commit an assault resulting in serious bodily injury, or
14 assaulting with a dangerous weapon any person from the U.S.
15 within the U.S., or creating a substantial risk of serious
16 bodily injury to any other person by destroying or damaging
17 any structure, conveyance or other real or personal property
18 within the United States or --

19 THE COURT: That sounds like a whole different
20 offense. One is to provide material support for an act of
21 terrorism, and the other is to threaten.

22 MS. CLARK PALMER: But the material support as
23 alleged has been provided to either -- to be used either in
24 the preparation for or the carrying out of this offense,
25 2332 (b).

1 The government didn't specify if it was only to be
2 used for preparation, or if it was and/or to be used to carry
3 it out. So it's possible that the jury could decide that the
4 material support was used to carry out or was intended to be
5 used to carry out a violation of 2332 (b).

6 So this says if you don't find that it was material
7 support that was provided, there is still the lesser included
8 of threatening to commit an act of terrorism transcending
9 national boundaries.

10 I guess if I could say it a different way, you can
11 violate 2332 (b) -- or 2339 (a) without violating 2332 (b),
12 but you can also violate it and also violate 2332 (b) at the
13 same time.

14 2339 (a), there is two different ways to violate
15 that statute.

16 THE COURT: What does the government say about
17 that?

18 MR. NAHMIAS: Well, to begin with, looking at
19 2339 (a) itself, that crime can be committed by providing
20 material support through any of the underlying types of
21 predicate 2332 (b) offenses. And the penalty is fifteen
22 years regardless of the penalty in 2332 (b).

23 So it's not a lesser included offense. It's
24 fifteen years no matter how the underlying predicate may be
25 committed.

1 But to be a lesser included offense to begin with,
2 the elements of 2339 (a) have to overlap the underlying
3 elements. And we can prove under the *Hassoun* case -- and I
4 believe it's hopefully in your instruction as you gave in the
5 prior trial -- you can prove the material support offense
6 even if the underlying predicate is not a completed offense,
7 because it can be in preparation for.

8 So the elements are not the same. The elements of
9 2339 (a) can include material support in preparation for an
10 underlying crime that is not completed, whereas 2332 (b), the
11 threat, would have to be a completed crime, a threat to
12 commit one of those violent acts.

13 THE COURT: That's true.

14 MR. NAHMIAS: And then conversely, with regard to
15 the threat, the elements required for most threats -- and we
16 haven't done a lot of research on threat cases -- but threats
17 have to be communicated. That's an element that would have
18 to be proved in 2332 (b).

19 We can prove the 2339 (a) offense without any proof
20 of any communicated threat. So there is an element of
21 2339 (a) -- 2339 (a) can be proved without an element of
22 these supposed lesser included offenses. So they don't
23 overlap in elements.

24 The description of 2332 (b) is not accurate just as
25 a matter of kind of the way they propose the instruction. It

1 is not limited to killing, kidnapping and maiming in the
2 United States. There is a longer list, which I think you
3 will describe probably in your instructions of how you
4 properly would even form a 2332 (b) offense.

5 And finally, you can only have an
6 affirmative offense -- a lesser included offense if the
7 defendant's theory of the defense is consistent with the
8 lesser included offense but not the major offense.

9 The best example is someone who is charged with
10 drug possession with intent to distribute wants a lesser
11 included offense for simple possession, and his defense is,
12 yeah, I have the hundred grams of marijuana for personal use,
13 not for use -- not for distribution.

14 I'm not aware of any defense that's been raised in
15 this case that would allow the idea that he is guilty of a
16 threat, but not guilty of material support for that threat.

17 THE COURT: Right, because he denies entirely the
18 conduct.

19 MR. NAHMIAS: He denies entirely the intent.

20 So for all of those reasons, I think it's an
21 improper instruction.

22 MS. CLARK PALMER: I do agree that you can violate
23 2339 (a) without violating 2332 (b). But in the indictment
24 it doesn't allege whether 2332 (b) -- it doesn't allege how
25 the material support was to be used. Was it to be used in

1 preparation for or to carry out?

2 And since it doesn't specify which one, there is a
3 possibility that -- or one of the ways -- one of the ways the
4 government is alleging that 2339 (a) has been violated is
5 that the material support would be used to carry out
6 2332 (b).

7 And if it was going to be used to carry out
8 2332 (b), that means the jury would have to find that an act
9 of terrorism transcending national boundaries --

10 THE COURT: But they haven't alleged any threat in
11 this, have they?

12 MS. CLARK PALMER: Yeah, there has been a chat
13 I think where there was some discussion about how the video
14 clips were to be used. And our argument is that the video
15 clips are not material support, and that's where we come in
16 with the lesser included.

17 Okay, if the video clips are not material support,
18 is there still the lesser included that it was a threat to
19 commit an offense, one of the prohibited acts under 2332
20 (b)?

21 THE COURT: So what do you think is the evidence of
22 a threat to commit one of the 2332 (b) offenses?

23 MS. CLARK PALMER: I think there was a chat where
24 Mr. Sadequee -- and I don't remember who the other
25 participants were, but they were talking about what to do

1 with the videos, and they were talking about, you know, maybe
2 using them in a movie and describing the movie and our --

3 THE COURT: How is that a threat? I thought the
4 testimony was that the movie was going to be used to rile up
5 the brothers and to excite the brothers, not to threaten
6 anybody.

7 MR. SAMUEL: There was a reference in the chat in
8 either September 23rd or maybe even October 15th where Tsouli
9 and Mr. Sadequee and Bektasevic are talking about maybe using
10 the movie to scare people. There is a few different
11 references in that chat.

12 THE COURT: Scaring is different than threatening.

13 MR. SAMUEL: Well, I don't think so.

14 THE COURT: You don't?

15 MR. SAMUEL: I mean, that's what they are talking
16 about. It was to threaten them, it was to say, you know, the
17 Mujahideen are in Washington, that's why they are going to
18 splice it together. They are going to splice the Bektasevic
19 tape to the Washington tape and threaten people without any
20 actual -- nothing to back it up, but it was just designed to
21 be a threat to the people of Washington.

22 Again, that's one view of how you can look at the
23 chat and what the people are talking about.

24 MR. NAHMIAS: If I can make one other argument on
25 this point? Because we are talking I believe about 2-B, and

1 2-A is a similar instruction with regard to Count One that
2 the defense submitted. And it becomes clear there, because
3 there they talk about the lesser included offense being a
4 conspiracy to threaten under 2332 (b). That is not an
5 offense.

6 2332 (b), if that's a lesser included offense, says
7 you can either commit the act, attempt to commit the act,
8 conspire to commit the act, or threaten to commit the
9 act. It does not have a conspiracy to threaten.

10 And so the evidence --

11 THE COURT: First, I'm not -- I'm sorry, go ahead.

12 MR. NAHMIAS: The evidence would either have to
13 support a threat, which requires a communication of that
14 threat to a victim, or it would have to support -- for the
15 conspiracy charge, it would have to support -- well, it would
16 have to be a threat or an attempt or a conspiracy. There is
17 not such a thing under 2332 (b) as a conspiracy to threaten
18 or an attempt to threaten. That's just not an offense under
19 2332 (b).

20 They are trying to mix a conspiracy under 2339 (a)
21 and the threat under 2332 (b), but you can't -- then it's not
22 a lesser included offense. Then you are mixing two statutes
23 together.

24 The lesser included offense has to stand or fall on
25 its own. And if you look at 2332 (b), A is the substantive

1 offense, and B says whoever threatens to commit an offense or
2 attempts or conspires to do so. It doesn't say whoever
3 attempts or conspires to threaten. That's just not an
4 offense.

5 THE COURT: I think that's probably true,
6 Mr. Samuel. Would you agree with that on the 2-A offense?

7 MR. SAMUEL: Oh, our instructions?

8 MS. CLARK PALMER: Yes.

9 MR. SAMUEL: Oh, I see. Yeah, it's a firmer
10 argument clearly on 2-B.

11 THE COURT: You mean 2-A?

12 MS. CLARK PALMER: We have a better argument on 2-B
13 and not a very good argument on 2-A.

14 THE COURT: I would agree with you on that.

15 MR. SAMUEL: 2-A is problematic.

16 THE COURT: That's because it's wrong; right?
17 Wouldn't you agree that Mr. Nahmias is right on 2-A?

18 MR. SAMUEL: It is more complicated on 2-A, because
19 the overlapping conspiracies plus --

20 THE COURT: Well, let me just put it more plainly.

21 MR. SAMUEL: I'm just not sure that ultimately we
22 wouldn't still be talking about a 2339 (a) offense. We would
23 just be talking about a different predicate, which doesn't do
24 us any good. We have got to get rid of the 2339 (a) to make
25 it a lesser included, which is what we can do in Count Two.

1 Otherwise fifteen years is fifteen years, we haven't achieved
2 anything.

3 It's under Count Two where you can eliminate the
4 material support element of the offense and just say instead
5 of -- if you just think of it as concentric circles --

6 THE COURT: Well, let's stick with the conspiracy
7 for a second.

8 Don't you concede that you can't charge this lesser
9 included offense as you have tried to charge it in 2-A?

10 MR. SAMUEL: I think we can come to that
11 realization.

12 THE COURT: The realization that you have to
13 concede that?

14 MR. SAMUEL: Yes.

15 THE COURT: All right. So you conceded that 2-A is
16 not a proper charge, so I will not give that.

17 Which brings us now back to Count Two and 2-B.

18 MR. NAHMIAS: And again, there, Your Honor, to be
19 an offense, it has to be a threat, and a threat requires the
20 communication of the threat to the victim. There is no
21 attempt to threat charge, there is no conspiracy to threat
22 charge, and I don't think there is any evidence in the record
23 that a threat was communicated to the victim.

24 There may be in this one chat they are talking
25 about a discussion of threatening people, but there is no

1 evidence that that threat was then communicated to the
2 victim.

3 THE COURT: Where do you get this requirement that
4 the threat be communicated? Where is that?

5 MR. NAHMIAS: That's -- there isn't a lot of law on
6 this threat charge. In almost all the threat instructions
7 and pattern instructions --

8 THE COURT: But theoretically you can't have a
9 threat if somebody doesn't know they have been threatened.

10 MR. NAHMIAS: Right, there is not a threat.

11 Now, some statutes allow for an attempted threat or
12 conspiracy to threat, and I suppose it could have been
13 charged under 371.

14 THE COURT: Right.

15 MR. NAHMIAS: But this statute standing alone is
16 not -- you have to have a threatening, and a threat if it's
17 just in the defendant's head doesn't threaten anyone.

18 THE COURT: Does somebody have their electronic
19 device on? And if so, could you turn it off? I'm getting
20 some static in the speaker.

21 Somebody still has their Blackberry on.

22 MR. SAMUEL: It was not mine.

23 THE COURT: I'm not accusing anybody.

24 MR. SAMUEL: Guilty conscience.

25 THE COURT: It's just an observation.

1 Ms. Clark Palmer, do you have to have a
2 communication? I mean, is there any evidence that there's
3 the communication of a threat?

4 MS. CLARK PALMER: I think there was in the chat
5 that was talking about the videos.

6 THE COURT: Well, first, do you have to have a
7 communication for there to be a threat?

8 MS. CLARK PALMER: Quite frankly, I don't
9 know. I didn't research that particular definition.

10 THE COURT: Well, can you be charged with a crime
11 of having a threat in your head but never telling anybody
12 about it?

13 MS. CLARK PALMER: Right, I don't think so.

14 THE COURT: I don't think so either.

15 So what then, if any, evidence is there of an
16 actual communication of a threat to anybody?

17 MS. CLARK PALMER: Well, the threat was
18 communicated to another --

19 THE COURT: The person to whom it was communicated
20 wasn't threatened. It was the concept of issuing a threat
21 that was communicated. It wasn't the communication of the
22 threat itself to somebody else.

23 Because the discussion is, Hey, we have got these
24 videos, let's threaten people, let's communicate that, and as
25 you have said, that could constitute a threat.

1 MS. CLARK PALMER: Uh-huh.

2 THE COURT: But it wasn't, Let's communicate it
3 and, by the way, let's have a little radio show and tell them
4 that we are going to do this or put it on the internet.
5 Nobody ever knew about that plan.

6 MS. CLARK PALMER: Nobody knew about it, but
7 I think there was a discussion about putting it up on the
8 internet.

9 THE COURT: Right. Well, let's assume that's
10 true. But there has been no communication of it.

11 MS. CLARK PALMER: Outside whichever people were
12 involved in that chat.

13 THE COURT: Doesn't the threat have to be
14 communicated to somebody who is being threatened?

15 If that was the case, if I bought your argument,
16 you could never have co-conspirators talking about
17 threatening people.

18 MS. CLARK PALMER: There was the discussion of the
19 movies and the video clips, and that chat was talking about
20 putting them up as part of the announcement.

21 THE COURT: I agree with all that. I agree that
22 that was the plan.

23 MS. CLARK PALMER: Uh-huh.

24 MR. SAMUEL: They actually did it.

25 MS. CLARK PALMER: And they actually announced the

1 formation of Al-Qaeda in Northern Europe. And though the
2 video itself wasn't put up at that time, they had discussed
3 putting up the video.

4 THE COURT: Yes, but there was no -- the threat in
5 your view were the videos -- I think Mr. Samuel has already
6 said this, that the threat would have been to publish the
7 videos in some -- and piecing it together with Bektasevic's
8 stuff so that the people that saw that would be threatened,
9 that they would say, whoa, violence now associated with
10 people in Washington, D.C. That was what the thought was
11 that they would do.

12 So the threat was never made. The idea of
13 threatening was formulated, and there was some specific
14 discussion of how that would be done.

15 But we go back to our initial discussion, which is
16 can you have a threat if it's never been communicated?

17 MS. CLARK PALMER: I will add to that, talking
18 about what the threat was, that they did announce the
19 formation of Al-Qaeda in Northern Europe, and that could be
20 viewed as a threat, taking the videos out of it. In that
21 case --

22 THE COURT: Threat to whom, to the world?

23 MR. NAHMIAS: Your Honor, I believe that chat came
24 after that -- the written bayaan happened on September 11th,
25 2005, and the chat is the 21st of September. It's dated

1 afterwards.

2 THE COURT: So if that's true, that doesn't work
3 for you.

4 MS. CLARK PALMER: Take the chat out of it. What
5 about just the announcement of Al-Qaeda in Northern Europe,
6 and our theory would be in that case there was no material
7 support, so 2339 (a) wouldn't be violated; instead it would
8 be a threat under 2332 (b).

9 MR. NAHMIAS: I believe the evidence was that he
10 had no knowledge of the written bayaan at the time it was put
11 out.

12 THE COURT: I think that's true.

13 Is there any evidence that he knew of the bayaan?
14 In fact, I think he asked, he said, I didn't have anything to
15 do with drafting it. In fact, he specifically said, Isn't it
16 true that you don't have any evidence that I had anything to
17 do with writing that bayaan?

18 So the evidence is that there was no evidence that
19 he had participated in the drafting of the bayaan.

20 MR. SAMUEL: So they won't argue that that can be
21 used against him in any way then, that's not attributable to
22 him? That what co-conspirators do -- it sounds like what we
23 were talking about ten minutes ago, that you are held
24 responsible for what co-conspirators do.

25 MR. McBURNEY: Conspiracy is different from a

1 threat. We have already established you can't conspire to
2 threaten. The question is whether the threat was
3 communicated.

4 MR. SAMUEL: That's exactly what *Pinkerton*
5 achieves, which is if people are in a conspiracy, you are
6 held responsible substantively for what your co-conspirators
7 do.

8 MR. NAHMIAS: Again, the problem is the lesser
9 included offense is just 2332 (b), subsection (b). There is
10 no conspiracy to threaten. It has to be freestanding a
11 threat if that's going to be a lesser included offense.

12 If you want to tie it in with 2339 (a) and we can
13 have conspiracies to prepare for a threat, we would argue
14 this chat is a conspiracy -- is material support and
15 conspiracy to provide material support in preparation for a
16 threat. We could argue that.

17 But that's a 2339 (a) offense, not a lesser
18 included offense.

19 MR. SAMUEL: We are talking about Count Two. We
20 are not talking about conspiracy anymore.

21 *Pinkerton* is that --

22 THE COURT: Here is what we are going to do. I am
23 operating in a vacuum. Nobody has given me any cases.

24 You will file memorandums on this position
25 simultaneously no later than 7:00 in the morning. I need

1 something in writing. I need to read the cases.

2 Now, this is a pretty late request for an
3 instruction, but I need more help than this discussion,
4 because I have got to go back and read some things. I cannot
5 rule on this today.

6 So, Mr. Bly, you might want to start working on
7 that.

8 I have tried to -- I have tried to save people from
9 having to do that, but it's clear that it's more complicated
10 than I thought. So we will do that tomorrow.

11 All right. The next then is the Government's
12 Request to Charge No. 8, which is the definition of terms. I
13 had just a couple of changes to that.

14 One is in the first line, I would add the word
15 after to furnish.

16 And then in the second line, to make readily
17 available, which comes from the language of the statute -- or
18 it comes actually from the *Sattar* case which I think comes in
19 turn from the statute.

20 Are there any objections to those changes?

21 MR. McBURNEY: No.

22 MS. CLARK PALMER: No objection.

23 THE COURT: Any objection to the other
24 definitions?

25 MR. McBURNEY: No.

1 MS. CLARK PALMER: I did -- if we could start with
2 personnel, in our instruction that we submitted in
3 Jury Instruction No. 1 on page three, our definition goes
4 into a little more detail about what personnel does mean, but
5 more importantly what it does not mean.

6 And there are several cites in there where that
7 language is very close to what's actually in the cases that
8 I cited.

9 THE COURT: This is your Proposed Instruction
10 No. 2?

11 MS. CLARK PALMER: No. 1, and then it's page three
12 of the whole document. The page number is three.

13 THE COURT: Okay.

14 MS. CLARK PALMER: It's the last paragraph on that
15 page and it continues on to page four.

16 THE COURT: Well, I generally don't instruct people
17 on what things are not. I deal with -- this is all that
18 First Amendment theme that is throughout your instructions.
19 I deal with that in a single, you know, a single global
20 instruction on this.

21 I mean, if personnel means that the defendant
22 knowingly provided one or more individuals to work under the
23 direct supervision of other conspirators -- well, their
24 definition is the term personnel refers to one or more
25 individuals and may include the defendant himself.

1 Now, it has to be read in the context of the
2 elements of the offense. If I were to adopt yours, there are
3 a lot of different things that you could say it does not
4 mean. The purpose of an instruction is to say here is what
5 you have to find, but consistent with Mr. Samuel's admonition
6 is that the more you add, the more complicated it gets.

7 And if that's the case, then shouldn't there be
8 other things that it also doesn't mean, or other things that
9 it does mean?

10 Do you know of any court that's given an
11 instruction where they say and here is what personnel means,
12 but let us tell you what it does not mean?

13 MS. CLARK PALMER: I don't.

14 The one sentence that I would particularly
15 highlight is where it says it does not mean provide persons
16 who would speak on behalf of terrorists or terrorist
17 organizations or provide moral support or simply receive
18 training, but to provide personnel who, after receiving
19 training, would serve as soldiers, recruiters and procurers
20 of supplies for the conspiracy.

21 And I believe that sentence is almost verbatim from
22 the case I cited, which is *United States v. Khan*.

23 THE COURT: But that's not a jury instruction.

24 MS. CLARK PALMER: It's not a jury instruction.

25 THE COURT: That's a general discussion of law.

1 MS. CLARK PALMER: That's correct.

2 THE COURT: What was the jury instruction in that
3 case?

4 MS. CLARK PALMER: I don't think I have that.

5 MR. MCBURNEY: We are aware of no material support
6 case where personnel has been defined in this way, in
7 particular excluding certain categories.

8 I think if the Court were to read the *Khan* opinion,
9 this is being taken a little bit out of context, this claim
10 that simply going to receive training would not consist of
11 personnel. The case goes on to explicitly say that
12 conspiring to get training is in fact provision of
13 personnel.

14 Now, there is language that fits what is being
15 said, but it's taken out of context, and it's another danger
16 of you could find in number of cases where at some point in
17 an opinion, not in a jury instruction, but in an opinion the
18 court might have said "not" and then described something.

19 But we are aware of no instruction that has so
20 limited it. And *Khan* later on in the opinion goes on to say
21 providing one's self for the purposes of receiving training
22 is in fact a form of personnel and thus material support.

23 THE COURT: All right. *Khan* does say that.

24 MS. CLARK PALMER: But the government's definition
25 doesn't even refer to training. And there has been a lot of

1 evidence in this case about going to Pakistan to get
2 training, and there was a lot of discussion about training,
3 which is why I pointed out that particular section in our
4 jury instructions.

5 THE COURT: So are you proposing a change to the
6 government's definition of personnel?

7 MS. CLARK PALMER: In addition. The term personnel
8 refers to one or more individuals and may include the
9 defendant himself, but it does not mean to simply receive
10 training, and then but to provide personnel who, after
11 receiving training, would serve as soldiers, recruiters, and
12 procurers of supplies for the conspiracy.

13 THE COURT: So your argument is that providing
14 yourself for training is not attempting to provide material
15 support? And if so, what's your authority for that since the
16 charge includes an attempt to provide material support?

17 MS. CLARK PALMER: Just citing directly from the
18 *Khan* case which says at page 822 --

19 THE COURT: Can you give me a copy of *Khan*?

20 All right. Go ahead and read it.

21 MS. CLARK PALMER: The conspiracy alleged in
22 Count Five is not to provide personnel who would speak on
23 behalf of LeT or provide moral support or simply receive
24 training, but to provide personnel who, after receiving
25 training, would serve that organization as soldiers,

1 recruiters and procurers of supplies.

2 THE COURT: So you think by implication that
3 says -- I mean, clearly the court there did not say, And by
4 the way, if you were to go to training, that that's not
5 enough. It's just saying in that case, they were alleging
6 more than that.

7 MS. CLARK PALMER: Well, I think that's important,
8 because that's how -- that's how we know that the statute is
9 not infringing on any First Amendment concerns, is that --

10 THE COURT: Well, going -- so you think that going
11 to training would be a First Amendment association right?

12 MS. CLARK PALMER: Yeah. I think there is also
13 some other -- there is some other cases, and I think I have
14 cited to them later on in our -- later on in our
15 instructions.

16 Like, for example, educating others about advocacy
17 for a certain organization.

18 THE COURT: That's different than saying you are
19 going to go to a place to learn to be a terrorist.

20 MS. CLARK PALMER: But the sentence right before
21 the one I just read says because criminal statutes -- let me
22 go back and read this sentence.

23 Although defendants have repeatedly argued that
24 attending an LeT training camp does not -- I'm sorry.

25 Because we read criminal statutes narrowly to avoid

1 constitutional infirmities, we find that the statute as
2 applied to this case does not implicate First Amendment
3 concerns, and then they --

4 MR. SAMUEL: Because they did more than --

5 MS. CLARK PALMER: Because they did more than just
6 speak on behalf of the organization or provide moral support
7 or to simply receive training. And because they did more
8 than simply receive training, there was no concern about
9 infringing on First Amendment rights.

10 And I believe the evidence presented here is
11 similar. There has been a lot of evidence about receiving
12 training by LeT, and this instruction is necessary to
13 delineate between what's protected by the First Amendment and
14 what is not in providing personnel.

15 THE COURT: Well, is seeking to attend a terrorist
16 training camp providing personnel so as to constitute
17 material support?

18 MR. McBURNEY: For 2339 (a), yes.

19 One problem we have with the definition of
20 personnel proposed by the defense here is that it pulls in an
21 important element from 2339 (b) being under the direction or
22 control. That is what Congress added to 2339 (b) to protect
23 it from First Amendment attacks.

24 But for 2339 (a), as *Khan* says, the sentence that
25 Ms. Clark Palmer started with --

1 THE COURT: What page is this quote from?

2 MS. CLARK PALMER: 822.

3 MR. McBURNEY: 822. It's the paragraph that starts
4 "moreover."

5 THE COURT: One second.

6 MR. McBURNEY: Sure.

7 THE COURT: All right.

8 MR. McBURNEY: It's the paragraph that starts with
9 "moreover."

10 THE COURT: Well, *Khan* says:

11 Moreover, as discussed in findings of fact
12 above, Khan and Chapman conspired to provide and
13 actually provided model airplane video and
14 navigation equipment to LeT through Sing. Such
15 equipment fits the definition of material support
16 cited above as both communications equipment and
17 physical assets.

18 The evidence also shows that the paintball
19 leaders, including Chapman and Abdur-Raheem,
20 conspired to provide material support to LeT in the
21 form of personnel. Although defendants have
22 repeatedly argued that attending an LeT training
23 camp does not constitute providing personnel to
24 that organization under 2339 (a) and 2339 (b), we
25 do not find that argument applicable given the

1 facts of this case.

2 So the issue of providing material support in the
3 form of personnel to attend training was not addressed in
4 this case; correct?

5 MS. CLARK PALMER: Providing personnel to attend
6 training, is that what you are --

7 THE COURT: Right. The evidence also shows, as
8 defendants have repeatedly argued, that attending an LeT
9 training camp does not constitute providing personnel to that
10 organization. That's what the defendants were arguing. The
11 court said, We don't find that that argument applies here.

12 So the court is saying that to the extent that the
13 defendants were arguing that you can't provide material
14 support in the form of training camps, we don't address that,
15 would you agree with that, because they said it's not
16 applicable? That's not what happened in the case, and that's
17 not what the court's finding was.

18 MS. CLARK PALMER: Correct.

19 THE COURT: So you then, after that finding by the
20 court, you rely on some other language. Where is that?

21 MS. CLARK PALMER: A few more sentences down, just
22 a couple, then because we read criminal statutes narrowly to
23 avoid constitutional infirmities, we find that the statute as
24 applied to this case does not implicate First Amendment
25 concerns at all.

1 And the reason the First Amendment concerns aren't
2 implicated is because personnel does not mean simply
3 receiving training --

4 THE COURT: Now, that's not what this case
5 says. This case says -- this is an "as applied"
6 constitutional argument, and this court is saying that
7 as applied in this case, the training camps is not an issue
8 because we found that as applied here, that the evidence was
9 there was material support to LeT in the form of personnel
10 and they say why.

11 But -- so now you are going down to a more general
12 argument. You are actually relying upon the Ninth Circuit
13 decision in *Humanitarian Law Project*, 352 F 3d 382.

14 Sarah, did you bring all of those cases in?

15 THE CLERK: Not yet.

16 MR. MCBURNEY: Judge, while she's getting those
17 cases for you --

18 THE COURT: Well, let me finish reading this.

19 MR. MCBURNEY: I'm sorry.

20 THE COURT: I just don't think this case addresses
21 that issue.

22 I admit that the court in making this as applied
23 argument and looking at the language of 2339 (a) and the
24 claim that it was unconstitutionally vague went through this
25 history about the charging decisions as set forth in the

1 United States Attorney's manual, but then they say because we
2 read criminal statutes narrowly to avoid constitutional
3 infirmities, we find that the statute as applied in this case
4 does not implicate First Amendment concerns at all.

5 So they are saying in this case there are no
6 First Amendment concerns, and then they go on to stay the
7 conspiracy alleged in Count Five was not to provide personnel
8 who would speak on behalf of LeT or provide moral support or
9 simply receive training, but to provide personnel who, after
10 receiving training, would serve that organization as
11 soldiers, recruiters and procurers of supplies.

12 I don't think it's a fair reading of the case to
13 say the court was saying, By the way, if you just received
14 training, we, the court in this case, find that that would
15 make the statute unconstitutional. I think it was an
16 observation that they were making, saying that I don't really
17 even have to go that far because that's not what was alleged
18 in this case.

19 MS. CLARK PALMER: Well, our concern was the
20 definition of personnel is just that there is not much
21 there. It's because it's not in the statute, so we looked at
22 some other case law to help provide a context for what
23 personnel means.

24 Because there are -- there are some aspects of
25 personnel that are protected by the First Amendment, and

1 I think you did address some of those in your First Amendment
2 instruction.

3 But I don't think your First Amendment instruction
4 gets as specific as what we have here going on.

5 THE COURT: Well, I know that, because there are a
6 million different ways that you can exercise the First
7 Amendment.

8 MS. CLARK PALMER: Uh-huh. But, for example, one
9 of the other lines I included is that entirely independent
10 action is not sufficient to qualify as being as active in an
11 organization as required by the definition of personnel, and
12 the reason --

13 THE COURT: I don't even know what that means. If
14 I was a juror, I couldn't understand that. What does that
15 mean?

16 MS. CLARK PALMER: Well, there has to be some
17 coordination with the group that is supposedly going to be
18 preparing for or carrying out these attacks in 957 or
19 2332 (b). There has to be some coordination with those
20 people in order to be providing personnel to
21 them. Therefore, entirely independent action does not
22 qualify as providing personnel.

23 And that has been one point that has been --

24 THE COURT: What authority do you have that there
25 has to be coordination, and how do you define coordination?

1 MS. CLARK PALMER: I -- now I'm on the
2 *United States v. Abu-Jihaad* case that was in Footnote 3.

3 THE COURT: This is the District of Connecticut
4 case?

5 MS. CLARK PALMER: Uh-huh.

6 THE COURT: What page are you on?

7 MS. CLARK PALMER: They start talking about the
8 term personnel on page 396.

9 There is a couple different portions in here that
10 specifically relate to our definition. And at page 400 they
11 start specifically talking about the statute 2339 (a), and if
12 you --

13 THE COURT: Hold on for one second.

14 MS. CLARK PALMER: Okay.

15 THE COURT: I'm going to call the jurors and delay
16 them until 11:00.

17 Why don't we just charge the language in the
18 statute?

19 MR. MCBURNEY: That's exactly what we have
20 proposed.

21 THE COURT: Not on this, did you?

22 MR. MCBURNEY: Huh?

23 THE COURT: Not in this definition of personnel.
24 Why don't we just read the definition of personnel from the
25 statute?

1 MR. MCBURNEY: For 2339 (a) or (b)? I do want to
2 make sure we are not conflating the two.

3 The charge proposed by the defense pulls in
4 elements of 2339 (b). Any reference to *Humanitarian Law*
5 *Project* is necessarily dealing only with 2339 (b).

6 There was a constitutional infirmity with 2339 (b)
7 at one point, and it was corrected by changing the definition
8 of personnel for that statute where they have to be under the
9 direction and control of the designated terrorist
10 organization.

11 That's not part of 2339 (a) which alleges that they
12 are support to a criminal conspiracy, and there is no
13 First Amendment protection to any actions made in furtherance
14 of a criminal conspiracy.

15 The definition of personnel in 2339 (a) is as
16 presented in the government's definition: One or more
17 persons including the individual charged.

18 THE COURT: Sarah, do you have a copy -- can you
19 get the statute that's in the book, the red book?

20 All of your argument on personnel definition,
21 including your cites to this case, refers to the definition
22 of personnel in 2339 (b).

23 MS. CLARK PALMER: In the *Abu-Jihaad* case, at page
24 400, about halfway between 400 and 401, there is discussion
25 of the term personnel as used in context of 2339 (a), and it

1 says:

2 In the context of that statute, it seems
3 apparent that the term refers to those individuals
4 who are provided or made available to prepare for
5 or carry out the crimes prohibited by that
6 statute.

7 The individual need not be an employee or
8 quasi-employee, but there must be some form of
9 coordination, joint action, or understanding.
10 Entirely independent action is not sufficient to
11 qualify as being at least active in an organization
12 as required by the definition of personnel.

13 THE COURT: So that's one district court's view of
14 that that has not been decided on appeal, I assume?

15 MS. CLARK PALMER: I don't believe so, Your Honor.
16 This is --

17 MR. McBURNEY: That's very factually
18 intensive. Ms. Collins actually prosecuted that case and can
19 explain, if the Court wants, the rather unique facts of
20 *Abu-Jihaad* that are contained in this opinion. I'm sure she
21 will distill that.

22 MS. COLLINS: Yes, Your Honor.

23 In this case, the judge was dealing with how to
24 apply the definition of personnel in a case where the person
25 provided information under the old form of the statute where

1 it really delineated very specifically certain forms of items
2 that would be material support. And information was not one
3 of those.

4 And the issue was: Is providing information
5 providing personnel? And that's the issue the court was
6 wrestling with, which is very different from the facts of
7 this case.

8 THE COURT: So then this discussion goes back to
9 don't you need people?

10 MR. NAHMIAS: I mean, having lived through the
11 evolution of this statute at the department, there is this
12 big distinction between (a) and (b).

13 Personnel in (a), because you are providing
14 material support including personnel to some other crime,
15 eliminates most of the First Amendment issues, because you
16 are not just kind of joining a group. You are actually
17 providing support with the intent or the knowledge that you
18 are promoting some other crime.

19 (b) is more difficult under the First Amendment
20 because it's material support to a group, and there are
21 associational rights and First -- and speech rights. And
22 there were a lot of concerns, especially the *Humanitarian Law*
23 *Project* line of cases, of which there are about six or seven,
24 with the old definition of 2339 (b) which just said
25 personnel, that's it.

1 THE COURT: Right.

2 MR. NAHMIAS: And after the first case --

3 THE COURT: That's why they amended it to include
4 the First Amendment language.

5 MR. NAHMIAS: And that's how it was -- and with the
6 direction and control amendment, because there was concern if
7 you just go to a training camp but all you did is go there,
8 that you might not be providing support unless you were
9 acting under the direction and control of the group.

10 I should say that there were convictions in cases
11 like the *Lackawana* case and others because the evidence --
12 and I think there was evidence in this case -- is that while
13 you are at the training camp, you are at the direction and
14 control of the group and doing what they say.

15 But in any event, that specific language was added
16 in (b), and it should apply to Counts Three and Four of this
17 indictment, just not Counts One and Two.

18 THE COURT: I think that's true, I think that that
19 is the distinction between the two sections of the statute.

20 MS. CLARK PALMER: What about the part that there
21 has to be some sort of coordination and that an entirely
22 independent action does not count as being active in an
23 organization?

24 I think there is still under 2339 (a), there has to
25 be coordination, joint action or understanding between

1 Mr. Sadequee and whoever is preparing for or going to carry
2 out either a violation of 956 or 2332 (b).

3 THE COURT: What's the government's response to
4 that?

5 MR. MCBURNEY: Several things.

6 Again, that language comes from *Abu-Jihaad*, which
7 had this unique scenario.

8 THE COURT: I understand that.

9 MR. MCBURNEY: But second, the *Hassoun* case, which
10 I think we will get to in later proposed charges from the
11 defense, deals with the issue of how well formed and how well
12 known the ultimate criminal conspiracy needs to be for the
13 person providing the material support.

14 And under *Hassoun*, it's not the case that there has
15 to be active links to this organization or ultimate
16 conspiracy. The defendant needs to have the specific intent
17 that his material support is going to that end. But the
18 government need not show to that end: On this date, and this
19 is where the bomb will go off, with this organization. It
20 need not be that well formed.

21 So this claim that there has to be an active link
22 between the two I don't think is supported by case
23 law. *Hassoun* is in this circuit. It is not from the
24 District of Connecticut.

25 THE COURT: Right. I'm going to give the -- define

1 personnel according to what's proposed by the
2 government. Your objection to that is overruled.

3 Any other objections to the definitions that are
4 set forth in Government's Request to Charge No. 8?

5 But I will give you credit for putting up the good
6 fight.

7 While you are considering that, let's make sure the
8 record is clear as to what you believe the term personnel,
9 how the term personnel should be defined, so that the circuit
10 can look at that.

11 MS. CLARK PALMER: I have it defined as --

12 THE COURT: You want it defined as you set forth in
13 the -- on page three and page four of Defendant's Proposed
14 Jury Charge No. 1?

15 MS. CLARK PALMER: Right.

16 THE COURT: All right. Thank you.

17 Any other objections to the definitions in
18 Government's Request to Charge No. 8?

19 MS. CLARK PALMER: We are just looking at one
20 thing.

21 THE COURT: Yes. Anything else?

22 MS. CLARK PALMER: Your Honor, the government has
23 also included the definition of a conspiracy to murder or
24 kidnap persons outside the United States, which refers to
25 18 U.S.C. 956.

1 And I would just note that in our jury
2 instructions, we obviously have a much more detailed
3 definition of what that statute says, 956.

4 THE COURT: You have almost an independent jury
5 instruction as if this was -- the same sort of instruction
6 you would give if this was a charge under that statute.

7 MS. CLARK PALMER: Well, the 2339 (a) does
8 reference these other statutes, as we said before, which is
9 why we went on to define the other statute. Because --

10 THE COURT: Well, I know. But here is what it
11 would be. That's a fundamental objection I have to your
12 approach. I think you are intentionally trying to make it
13 more complicated.

14 That by giving it in the format that you have
15 requested, it is as if the jury has to make multiple findings
16 of proof beyond a reasonable doubt of all the elements that
17 you have set forth in this very long, complicated charge.

18 The question is what is wrong with the definition
19 of murder as set forth in Defendant's Request to Charge
20 No. 8? What's missing about defining murder that you believe
21 is required by the law?

22 MS. CLARK PALMER: No, I agree murder is fine.

23 I'm just going back the page before when they
24 define the phrase a conspiracy to murder or kidnap persons
25 outside the United States, that whole phrase, which is

1 18 U.S.C. 956.

2 And I would just say that, number one, 2339 (a) is
3 a complicated statute and it references other statutes. And
4 then also the jury has to or should find, in order to find
5 somebody guilty of 2339 (a), you have to find, well, was
6 material support going to be used in preparation for or to
7 carry out, and then which scheme, either the 956 or the
8 2332 (b), was it going to be used for.

9 THE COURT: Right.

10 MS. CLARK PALMER: I think that finding has to be
11 made.

12 And for that reason we went on to define, okay,
13 well, what is a violation of 956? Because the jury is going
14 to have to decide was the material support to the way we
15 paraphrased it is kill, kidnap or maim people within the
16 United States, or kill, kidnap or maim people outside of the
17 United States?

18 THE COURT: Yeah, but what you propose, you tell
19 them you have to find the government proves the following
20 essential elements. They don't have to do that, do they?

21 You are basically saying you have got to prove that
22 a 956 offense was committed.

23 MS. CLARK PALMER: Well, they have to -- no, the
24 government has to prove at least one of the unlawful objects,
25 meaning, you know, kill, kidnap or maim as set forth in 956.

1 THE COURT: They don't have to prove that there was
2 a killing, a kidnapping or a maiming, do they?

3 MS. CLARK PALMER: They have to prove that the
4 material support and resources were to be used in preparation
5 for or carrying out one of those.

6 THE COURT: But they do have to prove that there
7 was an offense if in fact it even was carried out; right?
8 You can provide material support without it being
9 successfully committed; right?

10 MS. CLARK PALMER: Agreed. But I still think that
11 the statute 956 ought to be defined beyond just saying this
12 short sentence.

13 THE COURT: How would you define it, short of me
14 instructing them to go through a separate deliberation on a
15 separate crime, which I think even you agree is not
16 required?

17 You know, the government can jump in and help move
18 this along.

19 MR. NAHMIAS: Sorry.

20 MR. McBURNEY: I didn't want to -- Footnote 31,
21 which is on page 16 of our proposed charges, deals with this
22 issue.

23 THE COURT: I know.

24 MR. McBURNEY: And we cite the Court to three
25 different sets -- well, two sets of jury instructions, and

1 then more importantly the *Hassoun* case that makes it clear
2 that because, as is the situation in this case, the material
3 support is criminalized, can be given in preparation for this
4 ultimate object, the predicate offense need not have been
5 completed let alone proven as elements.

6 And then we provide two jury instructions,
7 *Abu-Jihaad* and *Hayat*, where the court simply summarized the
8 conduct for them, which is what we are proposing here.

9 We share the Court's concern. If you list all
10 those elements, then you are going to need to say, but the --

11 THE COURT: Yeah, I'm not doing that. And I think
12 the defense has conceded that that would be -- at least
13 I understood that they would agree that is too much.

14 Ms. Clark Palmer, would you agree that that's too
15 much?

16 MS. CLARK PALMER: That they would have to prove
17 all the elements of 956?

18 THE COURT: Well, that I should not instruct on all
19 the elements of a separate offense as if they have to prove a
20 separate offense?

21 MS. CLARK PALMER: Maybe not all the elements, but
22 I think some elaboration has to be given.

23 THE COURT: Like what?

24 MS. CLARK PALMER: Well, I was reading through our
25 instructions.

1 Well, even just reading that part of the statute
2 that I have set out on our page six.

3 MR. McBURNEY: To follow the Court's direction in
4 terms of jumping in, another problem we flagged with that is
5 that it lists, in part, segments of 956 that the government
6 didn't even charge. We list 956 (a), and this statutory
7 excerpt extends beyond that.

8 We weren't trying to shortcut the description of a
9 conspiracy to murder or kidnap persons outside the
10 United States. We are trying to succinctly describe
11 it. That's what we set forth based on 956 (a) (1) in the
12 jury charge.

13 THE COURT: So, Ms. Clark Palmer, you want me to
14 instruct on all that single-spaced language on page six?

15 MS. CLARK PALMER: Yes, Your Honor.

16 MR. NAHMIAS: Your Honor, that just cites the
17 statutory language.

18 THE COURT: That's not even a reasonable resolution
19 to the problem.

20 The purpose of an instruction is to help the
21 jury. If instructions were simply me -- I mean, what you
22 want me to do is I will take out the statute and just read
23 them the statute and say, By the way, you are on your own.
24 Is that what you want?

25 MS. CLARK PALMER: No. And then I will skip to the

1 page 13.

2 THE COURT: Well, let's go to the Government's
3 Request to Charge No. 8, the phrase a conspiracy to murder or
4 kidnap persons outside the United States means an agreement
5 or mutual understanding between two or more people to commit
6 outside the United States. . .

7 Any problem with that language so far?

8 MS. CLARK PALMER: No.

9 THE COURT: Okay. So then we pick up . . . an act
10 that would constitute . . .

11 Any problem with that language?

12 MS. CLARK PALMER: I'm sorry, on page 16?

13 THE COURT: Right.

14 MS. CLARK PALMER: No.

15 THE COURT: Then we get . . . murder or kidnapping.
16 So what's your problem with murder or kidnapping,
17 considering that we define murder in two terms down?

18 MS. CLARK PALMER: Right. I think the point of our
19 instruction is that the jury has to find -- the jury has to
20 find which statute, 2332 (b) or 956, the defendant was
21 knowing or intending the material support would be used for.

22 THE COURT: Why? If they are instructed it has to
23 be one or the other, why do they have to find one or the
24 other?

25 MS. CLARK PALMER: To --

1 THE COURT: Do you want them to be told that they
2 have to agree upon whether or not it's murder or kidnapping?

3 MS. CLARK PALMER: That's what we have in our
4 instruction. I think we said that all twelve of them have to
5 agree that -- which object of the conspiracy it was.

6 MR. NAHMIAS: Your Honor, that's proposed
7 Government's Exhibit --

8 THE COURT: Yeah, you have a whole instruction on
9 that.

10 MR. NAHMIAS: Yes.

11 THE COURT: What's wrong with their instruction on
12 that? In fact, it's separated out where they have to make a
13 separate finding. I think that is --

14 MS. CLARK PALMER: I see it.

15 THE COURT: Multiple objects, Request to Charge
16 10.

17 MS. CLARK PALMER: That's okay.

18 THE COURT: So do you have any objection to the
19 definition of conspiracy to murder or kidnap persons outside
20 of the United States?

21 MS. CLARK PALMER: No.

22 THE COURT: Any objection to any of the other
23 definitions?

24 MS. CLARK PALMER: Let me just check quickly.

25 No.

1 THE COURT: Then the next is Government's Request
2 to Charge No. 10, multiple objects. I have a couple of
3 suggestions.

4 In the first paragraph, I would have it read that
5 Count One and Two charge that the defendant conspired to
6 provide or conceal, attempt to provide or conceal, or
7 actually provide or conceal material support or resources
8 with respect to two crimes or offenses,
9 period. Specifically, a conspiracy to commit or kidnap
10 persons outside of the United States and acts of terrorism
11 transcending national boundaries.

12 That's essentially wordsmithing, but it seems to
13 read better to me.

14 MR. McBURNEY: No objection.

15 MS. CLARK PALMER: No objection.

16 THE COURT: And then just for clarification, in the
17 begining of the next paragraph, taking out the word "such," I
18 would say: In a case like this where two offenses or objects
19 are involved, it is not necessary for the government to
20 prove.

21 So I would add that to remind them we are dealing
22 with two offenses. I just thought that was clarifying.

23 Any objection?

24 MS. CLARK PALMER: No objection.

25 MR. McBURNEY: No, sir.

1 MR. SAMUEL: Your Honor, excuse me, the defendant
2 has asked if he could be excused. I think he's found his
3 limit.

4 THE COURT: Well, I found my limit too. Could
5 I excuse myself?

6 MR. SAMUEL: He just mentioned the Eighth Amendment
7 to me.

8 THE COURT: Where are the marshals?
9 Would you like to take him back then?

10 Let me make it clear, Mr. Sadequee, we are in the
11 middle of the charge conference that you had asked to
12 attend. My understanding is that you would now like to be
13 excused from the remainder of the conference. Is that
14 correct?

15 MR. SADEQUEE: Yes.

16 THE COURT: Then we will have the marshals take you
17 back.

18 (Whereupon, the defendant leaves the courtroom.)

19 THE COURT: All right. Then with that second
20 change, any objection to this instruction?

21 MR. McBURNEY: No, sir.

22 MS. CLARK PALMER: No objection.

23 THE COURT: Then the next is Government's Request
24 to Charge No. 9, material support for resources. Any
25 objection to that request to charge?

1 MS. CLARK PALMER: No objection.

2 THE COURT: Now we are to Count Three, which is the
3 second conspiracy count. Is there any objection to my
4 redrafting of Count Three?

5 MR. MCBURNEY: No.

6 MS. CLARK PALMER: Well, now we go back to the
7 definition of personnel. Since we were talking before about
8 the distinction of personnel under 2339 (b) and 2339 (a), if
9 you were inclined to put in a definition about what it does
10 or does not include, I think it would either go here or after
11 the charge on Count Four.

12 THE COURT: Has the government even proposed a
13 definition for personnel?

14 MR. MCBURNEY: Yes, sir. In 13, Government's 13,
15 it applies to Count Four as well, but we are in the 2339 (b)
16 context.

17 THE COURT: I don't see a definition for personnel.

18 MR. NAHMIAS: I'm sorry, it's 14.

19 MR. MCBURNEY: 14, right, page 29.

20 MS. CLARK PALMER: Okay. This says individuals who
21 act entirely independent.

22 THE COURT: So that includes what you want;
23 correct?

24 MS. CLARK PALMER: Yes, it does.

25 THE COURT: See, patience pays off.

1 MS. CLARK PALMER: It does.

2 THE COURT: All right. Going back to the core
3 charge as I have rewritten it, any objections?

4 MR. McBURNEY: No.

5 THE COURT: I'm sorry, did you --

6 MS. CLARK PALMER: No, Your Honor.

7 THE COURT: Ms. Clark Palmer, no?

8 Then the next is the instruction of Count Four,
9 which is Government's Request to Charge No. 12, any objection
10 to that request?

11 I know the government doesn't object since
12 they posed it.

13 MR. McBURNEY: Correct.

14 THE COURT: How about the defense?

15 MS. CLARK PALMER: No objection.

16 THE COURT: Then Government's Request to Charge
17 No. 13 has a number of definitions. Any objections to the
18 definitions?

19 MS. CLARK PALMER: No, Your Honor.

20 THE COURT: Then Charge No. 14, which we have just
21 briefly discussed, any objections to Request to Charge
22 No. 14?

23 MR. McBURNEY: Before we go to 14, I'm sorry, I was
24 just pointed out in the mode of simplifying the final
25 paragraph of Charge 13, we can limit it to a citizen of the

1 United States.

2 THE COURT: Right, because that's the evidence in
3 the case, I agree.

4 Any objection to that, Ms. Clark Palmer?

5 MS. CLARK PALMER: No objection.

6 THE COURT: How about 14?

7 MS. CLARK PALMER: No objection.

8 THE COURT: Then that would conclude the core
9 substantive and conspiracy offense instructions.

10 Then I would charge Government's Request to Charge
11 No. 4, which is the instruction on attempt. Any objection to
12 that instruction?

13 MS. CLARK PALMER: No objection.

14 THE COURT: Then the next I would give is the
15 aiding and abetting instruction in the Government's Request
16 to Charge No. 3. Any objection to that instruction?

17 MS. CLARK PALMER: No objection.

18 THE COURT: Then I would give the First Amendment
19 issue instruction that I have drafted. Any comments on that?

20 MS. CLARK PALMER: Do you want me to go first?

21 THE COURT: Yes.

22 MS. CLARK PALMER: The only topic that I think the
23 instruction does not address that we included in our request
24 is the topic of the First Amendment protecting speech that
25 encourages others to commit violence, which would be our

1 instruction -- like a combination of our Instruction 6, 7 and
2 8.

3 THE COURT: What's a short addition that you would
4 propose to address that? Just what you said?

5 Is there any objection to adding that?

6 MS. CLARK PALMER: I think 7 and 8 are sort of
7 redundant, and 8 --

8 THE COURT: Well, what I'm asking is, taking my
9 reformed charge, what would you add and where would you add
10 it so I can get some language to consider?

11 MS. CLARK PALMER: I would add it at the end of the
12 first paragraph, or actually maybe right before the last
13 sentence of the first paragraph.

14 THE COURT: Well, wouldn't it be more appropriate
15 at the very end where I'm talking about specific things?

16 MS. CLARK PALMER: I mean, I don't have a strong
17 preference one way or the other. I thought it maybe should
18 go in the front because it's talking about what is protected,
19 and then you switch to talking about what's not protected.

20 THE COURT: And then I go back and show what is
21 protected.

22 MS. CLARK PALMER: Right. I mean, either
23 way. I don't have a strong preference.

24 THE COURT: And what would you add?

25 MS. CLARK PALMER: Do you want me to just read

1 something out? I would combine these, our Instructions 6, 7
2 and 8.

3 THE COURT: Well, combine them in your mind and
4 then give me what the combination looks like.

5 MS. CLARK PALMER: Okay. Advocacy of illegal
6 action at some indefinite future time is protected by the
7 First Amendment.

8 THE COURT: Tell me what that means? You have
9 seen these people. They are not going to know what that
10 means.

11 MS. CLARK PALMER: Well, I guess to say even
12 shorter --

13 THE COURT: Encouraging somebody else to engage in
14 terrorism also is not a crime?

15 MS. CLARK PALMER: Yeah, it's -- the distinction is
16 some indefinite point in the future. Just suggesting that
17 somebody should do something that may cause somebody else or
18 may -- or suggesting some sort of illegal action may occur
19 sometime in the future is protected by the First Amendment,
20 and a person can advocate --

21 THE COURT: So in your world, if you say you need
22 to go out and kill John Doe --

23 MS. CLARK PALMER: No, I'm talking about just
24 advocating something that is illegal or advocating a point of
25 view that may make it likely for other people to go out and

1 commit -- may incite others to go out and commit crimes,
2 that's protected.

3 An example would be saying that people should smoke
4 marijuana, that shouldn't be illegal. That's illegal, but
5 you can advocate for that without yourself being convicted of
6 a crime.

7 THE COURT: What if I added to the end of this or
8 merely encouraging another person to commit a crime in the
9 future?

10 MS. CLARK PALMER: I think that is a succinct
11 summary.

12 MR. MCBURNEY: Put that at the end of?

13 THE COURT: The entire instruction. There is a
14 list of things. Any objection from the government?

15 MR. MCBURNEY: I'm processing it. Merely
16 encouraging another person --

17 THE COURT: I don't have that much time to wait for
18 you to process something.

19 MR. MCBURNEY: I'm writing, how about that?

20 THE COURT: Okay, you may write first, and then I
21 will give you moment to think about it.

22 MR. MCBURNEY: Could you please repeat the proposed
23 addition?

24 THE COURT: Were you not listening when I said it
25 the first time?

1 MR. McBURNEY: I was.

2 THE COURT: But you would like -- you just want to
3 make sure you got it down correctly?

4 MR. McBURNEY: Every word.

5 THE COURT: Or merely encouraging another person to
6 commit a crime in the future.

7 MR. McBURNEY: The government's view is this. It
8 was already a gray area with the Court's inclusion of the
9 language advocating on behalf of a terrorist organization,
10 because recruitment in some respects can come in the form of
11 advocacy. But we were prepared not to object to the Court's
12 formulation here.

13 Going further as is being requested by the defense
14 is now creating other gray areas. Solicitation is a
15 crime. If you solicit someone else to go commit a crime,
16 that's speech.

17 Hey, Syed Haris Ahmed, go to Pakistan, I think it's
18 a great idea. You get training, and let's see what we will
19 do with that.

20 I don't want the jury to think that that conduct is
21 protected by the First Amendment, because it's not. I think
22 it's gray, but a grayness that we are willing to accept, with
23 advocating on behalf of a terrorist organization, even though
24 I think that could be stretched if that's where Mr. Sadequee
25 wanted to argue in his closing, Hey, it's not recruiting, I'm

1 just saying this way of life is a good life, you should try
2 it.

3 But now we are expanding that and encompassing more
4 conduct that in fact is prohibited and is not protected by
5 the First Amendment and conduct that arose in this
6 case. That is our concern.

7 All of the -- I understand the defense is moving
8 away from all the platitudes about the First Amendment that
9 it originally proposed that arose in the noncriminal context,
10 but here the defendant's speech very much makes up a part of
11 his criminal conduct, as we included in some of our
12 citations.

13 There are no pantomime conspiracies here, and the
14 more the Court comes in and says, Let me tell you what the
15 First Amendment protects, your words draw brighter lines than
16 our words, and it's --

17 THE COURT: I wish that were true.

18 MR. McBURNEY: They have a tendency to do
19 that. And this is an area --

20 THE COURT: Give me an example of what encouraging
21 another person to commit a crime in the future, where that
22 would not be protected?

23 MR. McBURNEY: If the conspiracy is you need to go
24 get this training, which I think already is a crime, and then
25 we will let you know what to do.

1 THE COURT: That's true, I agree with
2 that. I think that this language is too ambiguous.

3 MS. CLARK PALMER: But there has been a lot of
4 evidence in the case about the other things that Mr. Sadequee
5 was doing, his activities on the At-Tibyan Publications, and
6 the government has pointed out a lot of documents that were
7 on there, and some comments that Mr. Sadequee had made about
8 Al-Qaeda.

9 And that's where the concern comes in.

10 THE COURT: I know that. Those all go to his
11 intent. I mean, that shows what he intended to do in
12 entering into this conspiracy. So that's why that was
13 admitted.

14 MR. SAMUEL: We do want to make sure the jury
15 doesn't convict based on that. I mean, otherwise they are
16 just relying on arguments of counsel, that Mr. McBurney won't
17 argue that.

18 Again, the jurors, who aren't schooled at all in
19 this, may say, Look at the stuff he had on his website, we
20 should just find him guilty. A juror could reason that way,
21 and we should discourage that.

22 THE COURT: That was the whole purpose of the first
23 paragraph. This means that individuals are permitted to
24 express controversial or even despicable views, freely
25 practice their religion, and associate with other individuals

1 and groups. A person therefore may not be convicted of a
2 crime solely on the basis of his opinions, beliefs or
3 associates, no matter how unpopular.

4 MS. CLARK PALMER: There is no temporal
5 element. There is no discussion of encouraging something to
6 happen in the future. That's why I brought this up.

7 MR. SAMUEL: The list also doesn't include what is
8 so key here, which is the possession of all of these
9 materials and the translation which, if I remember correctly,
10 they even have in their bill of particulars.

11 THE COURT: So I guess we could say that the mere
12 possession of the materials alone is not evidence of a
13 crime. However, though, the possession of those materials
14 can in fact be used to determine the defendant's
15 intent. Would you agree with that?

16 MR. MCBURNEY: Yes.

17 THE COURT: I mean, because the danger of what you
18 want is they say, oh, his mere possession of that, we can't
19 consider that in any way.

20 MR. SAMUEL: No.

21 THE COURT: Which is what happens when you start
22 adding all these little things in is that there are ways in
23 which those materials can be used by a jury.

24 MR. SAMUEL: It would almost be like a 404 (b)
25 instruction at that point, and I would be okay with that.

1 I mean, I think it's important because of the way
2 they presented 50-A and 49-A and those exhibits, you know.

3 THE COURT: So what's wrong with what I just said?

4 MR. SAMUEL: Well, I just need to think about it a
5 little bit, but -- in essence, nothing. I just would want to
6 make sure it's carefully worded that, you know, maybe you can
7 make reference to you have seen certain things that he
8 possessed, and that is certainly not an offense, though you
9 may consider that evidence along with all other evidence in
10 this case in deciding --

11 THE COURT: Give me a second.

12 This is just something off the top of my head after
13 a very long day. I would conclude it by saying that:
14 Finally, evidence has been introduced in this case consisting
15 of religious treatises and instruction. The mere possession
16 of this material is not alone a crime, but you may consider
17 it as evidence in considering whether the government has
18 proved the elements of the offenses with which the defendant
19 has been charged.

20 MR. McBURNEY: A couple of comments from the
21 government.

22 As a counterproposal, we were going to suggest --
23 you have a list of views in the first paragraph. This means
24 individuals were permitted to express controversial or even
25 despicable views, comma, possess written materials -- without

1 a description whether they are religious or not. I think
2 there has been some debate about whether they are
3 religious -- possess written materials, et cetera.

4 And then the second paragraph you go on to say,
5 Therefore, you may consider evidence of statements -- which
6 is the first item -- opinions, and then, comma,
7 possessions -- that would be the reference to the written
8 materials, rather than calling them out as being somehow
9 unique from his opinions and everything else that were
10 expressed.

11 THE COURT: So you would say statements, written
12 material, opinions --

13 MR. McBURNEY: That's fine. I had the word
14 possessions, meaning things he possessed, but written
15 materials is fine. That may be a closer parallel to the
16 structure of the preceding paragraph.

17 THE COURT: That gives everybody a chance to argue
18 however they want to argue on the written materials, and it
19 doesn't confine anybody to any kind of or specific written
20 materials. That seems to make sense to me. Is everybody in
21 agreement with that?

22 MS. CLARK PALMER: Yes, we are.

23 THE COURT: Let me just make sure that you have
24 just -- we have all agreed on the same thing.

25 In the first paragraph, third sentence, it would

1 read: This means that individuals are permitted to express
2 controversial or even despicable views, possess written
3 material, freely practice their religion, and associate with
4 other individuals and groups.

5 And then I would add in the second paragraph,
6 second line from the bottom, I would just add: Written
7 materials after statements and before opinions?

8 MS. CLARK PALMER: Okay.

9 MR. McBURNEY: I think it should be added one more
10 place I just noticed. The final sentence -- I think this is
11 really the point the defense wants to make. The final
12 sentence of the first paragraph: Cannot be convicted of a
13 crime solely on the basis of his opinions, comma, written
14 materials, comma, beliefs. I think that's their concern.

15 THE COURT: I'm sorry, where are you again?

16 MR. McBURNEY: The final sentence of the first
17 paragraph.

18 THE COURT: So after opinions add written
19 materials?

20 MR. McBURNEY: Yes, sir.

21 THE COURT: So I would add now written materials
22 between opinions and beliefs. Now is everybody satisfied?

23 MS. CLARK PALMER: With the whole instruction or
24 just what we --

25 THE COURT: With the whole instruction as amended?

1 MS. CLARK PALMER: What did we decide about
2 encouraging another person to commit a crime in the future?
3 Did you decide not to give that?

4 THE COURT: Well, yeah, for the reasons that I
5 don't know what that means. And I think that that is covered
6 in the first part of the -- they have agreed to advocate it
7 on behalf of the terrorist organization.

8 So one, I think that you could probably argue that
9 it's included in that already, because you are advocating
10 that somebody engage in wrongful conduct or a crime in the
11 future, since we are talking about terrorist organizations,
12 terrorist groups.

13 And I think that certain things can be --
14 encouraging another person to commit certain kinds of crimes
15 I think can in fact be a grounds for somebody to be
16 convicted.

17 MS. CLARK PALMER: Yeah, I agree that the law sets
18 out a lot -- not a lot, but there are some limitations as to
19 when that's protected and when it's not. Just in the
20 interest of brevity I just said it that way.

21 THE COURT: So going back to this instruction, I
22 have amended it to address three specific instances where I
23 have inserted the concept of written materials. With those
24 amendments to the First Amendment issues that I proposed, is
25 there any objection?

1 MR. MCBURNEY: No.

2 MS. CLARK PALMER: No objection.

3 THE COURT: All right. The next was a request for
4 there to be -- let me step back for a second.

5 I believe that with that final instruction, that I
6 have essentially concluded -- I have concluded the
7 instructions on the offenses in the case and then I go -- now
8 I go back and pick up with the standard instruction that I
9 give, and there are some additional issues we need to
10 address.

11 The next is the instruction on on or about,
12 knowingly and willfully. The government has requested an
13 addition to that, and that is set forth in their Government's
14 Request to Charge No. 1.

15 Is there any objection to adding that to the
16 knowing and willfully definition?

17 MR. WAHID: I'm sorry, Judge, you want to add
18 knowing and willfully to the pattern?

19 MR. SAMUEL: No, add that.

20 THE COURT: No, add that to the end of the knowing
21 and willfully instruction in my general instructions.

22 MR. SAMUEL: You can consider all the evidence in
23 the case to decide whether he acted knowingly and willfully.
24 I mean --

25 THE COURT: I wasn't asking for outrage about it.

1 I was just asking your --

2 MR. SAMUEL: It's the level of outrage that should
3 be reflected by the court reporter.

4 THE COURT: That wasn't -- that was said in
5 jest. I think what Mr. Samuel is saying is that he objects
6 to it because it's redundant.

7 MR. SAMUEL: Sure.

8 MR. MCBURNEY: I think the way the First Amendment
9 issue has been framed now, we have no problem with the Court
10 not including number one.

11 THE COURT: I really think it's picked up in that
12 now.

13 MR. MCBURNEY: Indeed.

14 THE COURT: Okay. So I will just give my
15 regular -- the instruction as it's set forth in the standard
16 instruction.

17 And then there is the government would also like
18 added to this instruction -- whole instruction is the on or
19 about, knowingly and willfully instruction, they wanted an
20 instruction on disjunctive language. And that's their
21 Request to Charge No. 5.

22 I really do think that's appropriate. And now that
23 I know more about the case and have looked at the statute
24 again, there are an awful lot of ors and ands.

25 MS. CLARK PALMER: No objection.

1 THE COURT: All right. Then I would -- then moving
2 on in the general instruction, I will obviously not give the
3 caution on single defendant, single count, but I will single
4 defendant, multiple counts.

5 I assume nobody has any objection to the
6 instructing on that, do they?

7 MR. McBURNEY: No.

8 MS. CLARK PALMER: No objection.

9 THE COURT: All right. Then of course I won't give
10 the multiple defendants, multiple counts.

11 The next -- I guess this is one that we probably
12 should have taken up when we were talking about the specific
13 charges, but the charge about unlawful combatants.

14 Ms. Clark Palmer, I think they are going to make
15 you argue this.

16 MS. CLARK PALMER: Yeah.

17 THE COURT: Where did this come from?

18 Oh, this came from Major Corn's article.

19 MS. CLARK PALMER: And a couple others that I just
20 couldn't find to print out for you, so I didn't cite them.

21 THE COURT: Who were the lawful combatants? What
22 evidence was there of lawful combatants?

23 MS. CLARK PALMER: There has been testimony, and
24 the person that I remember right now was Mr. Ahmed about how
25 LeT functions and that they operate openly, that they have a

1 hierarchical military structure, that they wear emblems
2 I believe he said. Either he or Mr. Kohlmann talked about
3 how they wear --

4 THE COURT: So does the FARC. Are FARCs lawful
5 combatants down in Colombia?

6 MS. CLARK PALMER: I don't know anything about
7 FARCs. I didn't know anything about LeT before this case
8 either.

9 THE COURT: Well, those are all interesting
10 observations, but what makes them lawful combatants?

11 MS. CLARK PALMER: Well, we also heard I think
12 again from Mr. Ahmed about how LeT operates in Pakistan
13 openly, and that sometimes they operate at the direction of
14 the Pakistani government, and that they are under the belief
15 that they are fighting, you know, a just war against their
16 oppressors.

17 And I know that they have been designated by the
18 U.S. as a terrorist organization, but we have had testimony
19 about --

20 THE COURT: I know we had testimony about
21 Mr. Ahmed's belief about -- although I don't think it was as
22 clear as you have stated it, but let's assume that LeT wears
23 uniforms and they function somewhat openly. I think even
24 Mr. Kohlmann said that.

25 MS. CLARK PALMER: Uh-huh.

1 THE COURT: What makes them lawful combatants?

2 MS. CLARK PALMER: Well --

3 THE COURT: By that definition, the Cosa Nostra
4 would be lawful combatants, because they have a hierarchical
5 structure and they operate in a disciplined way and they
6 believe that they are engaged in justifiable activity.

7 MS. CLARK PALMER: I don't know how to comment on
8 that. But I will say from the, you know, the *Lindh* case that
9 I cite here talks about the Geneva Convention, which I think
10 in that case they also set out those four requirements that
11 I stated there.

12 And then the point that comes from Major Corn and
13 Major Smith's article is about under the International Law of
14 Armed Conflict, that lawful combatants cannot be held
15 criminally liable for killing, kidnapping or maiming people.
16 And that goes to what's charged in Count One and Count Two.

17 THE COURT: So your argument is that the LeT, which
18 is a designated foreign terrorist organization, that when
19 they cross into Kashmir and somebody serves as a suicide
20 bomber, that because they believe that Kashmir ought to be
21 liberated and then should become Muslim, that they are lawful
22 combatants?

23 MS. CLARK PALMER: Well, I did include in this
24 instruction the second paragraph, second sentence: If the
25 persons to whom Mr. Sadequee allegedly conspired to provide

1 or provided material support intended only to assume
2 combatant status for the purpose of protecting other Muslims
3 under attack in such places as Chechnya, Iraq, Afghanistan,
4 Pakistan or India, they are cloaked with combatant immunity.

5 THE COURT: On a one-to-ten scale, how serious are
6 you about this, one being very serious and ten being I will
7 take a shot at it?

8 MS. CLARK PALMER: Towards ten, but I think there
9 still has been -- I recognize I didn't cite to a case where
10 this type of a jury instruction had been given before, but I
11 don't think that means it couldn't be given.

12 And it's also -- well, I don't know what the word
13 is, but I think that the authority I did cite to you does
14 hold the concepts that I set out on this jury instruction,
15 and I think it's worth a shot.

16 THE COURT: What evidence is there -- because here
17 is your definition. Under the International Law of Armed
18 Conflict, combatants are presumed to be entitled to combatant
19 immunity, and they may not be held criminally liable for
20 killing, kidnapping or maiming persons or destroying
21 property, provided that in doing so they conduct themselves
22 in accordance with the International Law of Armed Conflict.

23 First, what evidence is there that LeT conducts
24 themselves in accordance with the International Law of Armed
25 Conflict?

1 By the way, tell me what is the International Law
2 of Armed Conflict?

3 MS. CLARK PALMER: I was just going to see if I
4 could read that to you.

5 MR. NAHMIAS: Do you want the government to jump
6 in, or do you want us to wait?

7 THE COURT: No, this is sort of fun.

8 MS. CLARK PALMER: I don't have that right at my
9 fingertips, but the part I flagged out of the --

10 THE COURT: Well, then let's just jump into what
11 evidence is there that they have acted in accordance with the
12 International Law of Armed Conflict?

13 MS. CLARK PALMER: Well, I will go back to the
14 four -- the four elements that I set forth in the last
15 paragraph, the operating under a hierarchical military
16 structure, uniforms, carry arms openly, conduct their
17 operations in accordance with the laws and customs --

18 THE COURT: What evidence is there, for example,
19 that they carry arms openly?

20 MS. CLARK PALMER: I think Mr. Ahmed said that --
21 well, I think he may have been talking about something
22 different.

23 THE COURT: How about that they conduct their
24 operations in accordance with the laws and customs of war?

25 MS. CLARK PALMER: Well, he talked about -- and

1 I think, I think Mr. Kohlmann touched on this too, that
2 sometimes LeT operates at the direction of or at least with
3 the consent of the Pakistani government.

4 THE COURT: Does that constitute operating in
5 accordance with the laws and customs of war? I think
6 Mr. Kohlmann was pretty clear that they are terrorists and
7 engage in terrorist attacks.

8 MS. CLARK PALMER: Well, Mr. Sadequee tried to
9 challenge him on that and get him to address some of the
10 points that Mr. Ahmed made about how they are viewed in
11 Pakistan.

12 And the point of this is the -- there is the
13 United States' viewpoint of LeT, and then there is the people
14 in Pakistan's viewpoint of LeT, and there has been evidence
15 that those are different.

16 THE COURT: Well, what evidence is there of the
17 Pakistani viewpoint of LeT? We have Mr. Ahmed, who is not a
18 Pakistani. He's an American.

19 MS. CLARK PALMER: Right. Well, he is of Pakistani
20 descent. He was -- was he born here?

21 MR. SAMUEL: He was born there.

22 MS. CLARK PALMER: He was born in Pakistan.

23 MR. SAMUEL: Dual citizen.

24 MS. CLARK PALMER: And I also believe Mr. Kohlmann
25 said that LeT operated with the consent of the Pakistani

1 government.

2 THE COURT: That's your best shot?

3 MS. CLARK PALMER: At the moment. I can't find
4 more on the laws of -- International Law of Armed Conflict
5 right now.

6 THE COURT: What does the government have to say
7 about the unlawful combatant instruction request?

8 MS. COLLINS: Your Honor, we believe that this memo
9 is not an accurate statement of what a lawful or unlawful
10 combatant is. But also there is no evidence that LeT meets
11 any of the requirements or meets all of the requirements.

12 Specifically, you were just asking about the law of
13 war. The *Lindh* case, 212 F Supp 2d 541, at 558 is talking
14 about the Taliban and the fact that it is not a lawful
15 combatant because they target civilian populations and they
16 target civilians in their attacks.

17 Mr. Kohlmann testified about LeT attacks, and one
18 in particular that he described -- he described several, but
19 there was one in particular against the Red Fort, which is a
20 tourist site in India, and that was deliberately targeting
21 civilians. Civilians were killed, they took the place over
22 in one of their commando-style raids.

23 And under *Lindh* as well as there is another case,
24 *U.S. v. Pineda*, which is from the District of Columbia,
25 Federal District Court, 2006 Westlaw 785287, talked about the

1 fact that when you target civilians, that does not comport
2 with the laws of war, and therefore the FARC in the *Pineda*
3 case, the Taliban in the *Lindh* case, do not qualify as lawful
4 combatants.

5 There are other issues with this instruction that I
6 can address, but that --

7 THE COURT: Didn't LeT engage in an attack just
8 last week in which they targeted civilians?

9 MS. COLLINS: We were talking about evidence
10 pre2005 since we limited him talking about 2005 and before,
11 given Your Honor's instructions about Dubai and things like
12 that. We didn't want him to discuss anything after that, and
13 that's the relevant time period on this case.

14 THE COURT: I agree. I guess it's my observation
15 that they haven't changed much, it appears.

16 MS. COLLINS: No, I don't think they have changed.

17 And, Your Honor, it has to meet all four
18 qualifications. It also has to -- there is an additional
19 qualification that's not stated in the jury instruction that
20 is discussed in both *Lindh* and *Pineda*, the fact that they
21 actually have to fight on behalf of the state, and there is
22 no evidence that LeT fights on behalf of the Pakistani
23 government.

24 Mr. Kohlmann testified that they have been banned
25 by the Pakistani government, that they routinely threaten the

1 Pakistani government. There is no evidence that they fight
2 on behalf of them.

3 THE COURT: Any further response?

4 MS. CLARK PALMER: Nothing further.

5 THE COURT: Do you agree that that last requirement
6 is one of the requirements?

7 MS. CLARK PALMER: I don't see that in the exact
8 section of *Lindh* I'm looking at. I'm not saying it's not in
9 there. I just don't see it.

10 MS. COLLINS: I would direct the Court's attention
11 to page 554.

12 THE COURT: What page was it?

13 MS. COLLINS: It's in *Lindh*, page 554. The court
14 says:

15 Importantly, this lawful combatant immunity is
16 not automatically available for anyone who takes up
17 arms in a conflict. Rather, it is generally
18 accepted that this immunity can be invoked only by
19 members of regular or irregular arm forces who
20 fight on behalf of the state and comply with the
21 requirements for lawful combatants.

22 In Pineda as well they discuss, as a threshold
23 matter, the Geneva Convention applies only between parties,
24 and the FARC is not a signatory to the Geneva Convention,
25 it's not a state.

1 So that was also in *Pineda*, but the salient
2 language is in *Lindh*.

3 MS. CLARK PALMER: I see that part now, generally
4 accepted, this immunity didn't -- I would just go back to
5 what has been said before about LeT fighting with the
6 consent, if not support of the Pakistani government.

7 THE COURT: I find that the evidence does not
8 support the giving of this instruction, so I will not give
9 it. I sustain the government's objection.

10 All right. Then after that I give the duty to
11 deliberate instruction, and the verdict instruction. Any
12 objections to those instructions in my standard
13 instructions?

14 MS. CLARK PALMER: No objection.

15 MR. McBURNEY: No.

16 THE COURT: All right. I will give you my thoughts
17 on the verdict form.

18 Jessica, could you hand that to them?

19 Any objection to the verdict form?

20 MR. McBURNEY: No.

21 MS. CLARK PALMER: Just if we could have a couple
22 more minutes?

23 We are talking about the Government's Request to
24 Charge No. 9 where at the last sentence it says that the jury
25 must unanimously agree upon which type of material support or

1 resources was provided or attempted to provide or conspired
2 to provide, and that should be included on the verdict form.

3 THE COURT: Well, if they are instructed on that,
4 why would they have to make that special finding?

5 MS. CLARK PALMER: I take that back.

6 We don't have any objection to the verdict form.

7 THE COURT: All right. Thank you.

8 Now, is there any jury instruction that you
9 requested that I have not addressed that you want me to
10 address?

11 MS. CLARK PALMER: You have addressed all of ours.

12 MR. McBURNEY: Same here.

13 THE COURT: So I will look forward to get from you
14 some briefing on this lesser included offense as it applies
15 to Count --

16 MS. CLARK PALMER: Two.

17 MR. McBURNEY: Count Two.

18 MR. NAHMIAS: Just to be clear, just Count Two as I
19 understand it now, and only on the issue of -- just so we are
20 clear with what the proposed lesser included offense is,
21 I understand that it is the threat prong of 2332 (b), not
22 attempt to threaten or conspiracy to threaten, but just the
23 question of whether a threat under that is a lesser included
24 offense.

25 THE COURT: That was my understanding.

1 MS. CLARK PALMER: That's correct.

2 THE COURT: All right. I am going to tell the
3 jurors to come at 10:00 rather than 11:00. We have gotten in
4 touch with all but two of them.

5 So I think that will give me enough time now that
6 we are only dealing with that one issue for me to decide that
7 and make a final decision on that instruction and whether the
8 lesser included offense gets charged, and then we will be
9 ready to go.

10 MR. McBURNEY: So we will get e-mail briefs to
11 Ms. Birnbaum by 7:00 tomorrow morning?

12 THE COURT: Yeah, she's not briefing anything for
13 you. You are briefing it for her.

14 MR. McBURNEY: Right, we will e-mail the brief to
15 her at 7:00, and that will get its way --

16 THE COURT: Or if you want to get it in earlier.

17 THE CLERK: Do I have to be here at 7:00?

18 THE COURT: Can you e-mail it instead to Sarah?

19 MR. McBURNEY: Yeah, we will get her e-mail
20 address.

21 THE CLERK: Thanks.

22 THE COURT: Anything else we need to discuss before
23 we break?

24 MR. McBURNEY: When should we be back tomorrow?

25 THE COURT: 9:15.

1 MR. SAMUEL: Do you -- is anything we did here
2 sufficient means of preserving any issues? I don't know if
3 there are any, but to the extent that there were, he's not
4 going to be able to articulate any objections after the
5 charge. If that's the rule, so be it.

6 I mean, the Eleventh Circuit generally would
7 require a full recitation of objections, but some judges say
8 but I will allow you to adopt everything we did in the charge
9 conference.

10 THE COURT: Oh, you may do that, yeah.

11 MR. SAMUEL: We can adopt everything we have just
12 done?

13 THE COURT: Yes.

14 MR. SAMUEL: I'm just going to write out a little
15 thing for him to say, I adopt everything that occurred at the
16 charge conference including waiver of some issues, withdrawal
17 of some -- but there were at least one or two objections I
18 think that we --

19 THE COURT: Well, armed combatant.

20 MR. SAMUEL: Right.

21 THE COURT: And --

22 MR. McBURNEY: The record will show what they are.

23 MR. SAMUEL: As long as we can adopt what we did
24 today.

25 THE COURT: What I do is I don't do that in front

1 of the -- I don't ask for your objections in front of the
2 jury anyway. I send them out, and when they are out I ask if
3 anybody objects to the charge as given.

4 And then you can say you don't object to the charge
5 as given, however you do want to preserve the objections that
6 you made during the charge conference.

7 MR. SAMUEL: Okay.

8 THE COURT: And I think that's enough to protect
9 the record.

10 MR. SAMUEL: If it's okay with you -- it's okay
11 with every court, as long as you say it's okay with you.

12 THE COURT: And he doesn't have to -- you don't
13 have to write anything out. If you want to do that, you may
14 do that.

15 MR. SAMUEL: All right.

16 THE COURT: Can we adjourn for the evening?

17 You did very good job. Thank you.

18 MS. CLARK PALMER: Thank you, Your Honor.

19 THE COURT: You did too.

20 MR. SAMUEL: But it wasn't her first.

21 MR. NAHMIAS: The one thing I argued, we have
22 homework on.

23 THE COURT: You know, I did get a little irritated
24 about the -- what was it?

25 MR. SAMUEL: The photographs. But the two cases

1 you gave us, we looked at them, we thought maybe they were
2 supporting our position on the photograph authentication
3 issue.

4 THE COURT: I don't think so, but that's neither
5 here nor there.

6 Yeah, I guess I do want to at least reiterate to
7 everybody that I spend a lot of time on this, and I need to
8 read things. I'm not as intuitive as other judges are.

9 The reason why I get here early in the morning is
10 that I have got to read cases, and I don't -- I'm never
11 comfortable unless -- I get a little anxious when I'm asked
12 to make a ruling without the benefit of being able to go back
13 into my office and say let me read what this case really
14 says.

15 And it was a little late, but you have done a good
16 job on the case. It's been a privilege to preside over this
17 because of the quality and the professionalism of the
18 lawyers.

19 And that should not be -- I don't want anybody to
20 read anything into what I said when I was irritated this
21 afternoon that I don't deeply respect all that you have done
22 on behalf of your clients even though you wanted to do more,
23 because the lawyering has been superb.

24 And this is what makes this job such a privilege is
25 when we have cases like this. It's been a hard case, and I'm

1 trying very hard to make the right rulings, but that's why
2 your input is so valuable to me. Because you present issues
3 in objective ways, but at the same time with the proper
4 advocacy on behalf of your clients, and I'd hate to be
5 deprived of that.

6 So thank you for your help today and for your being
7 patient with me.

8 We are in recess. See you tomorrow morning at
9 9:15.

10 (Proceedings adjourn at 7:25 p.m.)

C E R T I F I C A T E

UNITED STATES OF AMERICA :
:
NORTHERN DISTRICT OF GEORGIA :

I, Nicholas A. Marrone, RMR, CRR, Official Court Reporter of the United States District Court for the Northern District of Georgia, do hereby certify that the foregoing 316 pages constitute a true transcript of proceedings had before the said Court, held in the city of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 1st day of September, 2009.

/s/ Nicholas A. Marrone

NICHOLAS A. MARRONE, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
Official Court Reporter
Northern District of Georgia